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A SURVEY OF RECENT LABOUR LEGISLATION IN CANADA

By T. M. GREER

History of the Earlier Labour Legislation

Any work purporting to show the development of labour legislation in Canada would of necessity have to go back to the earliest statutes enacted in the various provinces of the country if one was to give a completely detailed picture of how Canada has arrived at the labour legislation it has today. However, the purpose of this article is to present a survey of recent labour legislation from a national point of view. Therefore it has been with this thought in mind that the author has devoted some space to a tracing of the history of labour legislation as passed by the Dominion Government, giving in each case an outline of each Act, up until the passage of the Wartime Labour Relations Regulations in February, 1944. This historical outline has been carried up to this point to serve as an introduction for the reader to the Wartime Labour Relations Regulations and The Industrial Relations and Disputes Investigation Act which represent the main body of this work and to give the reader an idea of the general background of these two main pieces of legislation.

Background of the Conciliation Act of 1900

The Dominion first entered the labour legislation field in the year 1900 with the passage of the Conciliation Act and the setting up of a Department of Labour to administer the Statute. There were a number of things which contributed to this move. A Royal Commission on Labour and Capital in 1889 had recommended the establishment of a Bureau of Labour to collect and publish labour information and although statutory provision for such a bureau had been made in 1893, none had been created. Also in 1899 a Dominion inquiry into conditions in the metal mines of British Columbia had resulted in a recommendation that the Government should provide mediation services in labour disputes and set up a Department of Labour. In addition to these points the flood of immigrants and increased industrialization had brought labour problems to the fore and attracted public attention. Thus the vital need for a Department of Labour and some form of national legislation was recognized and the Conciliation Act was duly passed representing the first real Dominion labour legislation.

The Conciliation Act

The Conciliation Act was modeled after a similar piece of British legislation which had been passed in 1896 and was merely a permissive measure. Under the Act the Minister of Labour was authorized to collect and publish labour information and to appoint conciliation officers or a conciliation board whose services could be placed at the disposal of either or both parties to a dispute. This provision, while unobtrusive in its operation has been retained in all Dominion labour legislation since the passage of this Act and has proved of great value in the early stages of a dispute before a stoppage of work has occurred and in composing differences which have resulted in a strike or lockout. The great bulk of the work accomplished under this Act is, necessarily, unknown to the general public.

The Railway Labour Disputes Act

The Railway Labour Disputes Act was the next piece of legislation passed by the Dominion Government and was drafted as a compulsory investigation measure forbidding a strike or lockout until after inquiry. Before it was passed the Bill was revised at the insistance of labour merely to enable the Minister, at the request of a municipality or on his own initiative, as well as at the request of either party, to appoint a tripartisan committee of conciliation and investigation in connection with a dispute involving railway workers. Parliament having learned a lesson from the early provincial laws, provided against one party preventing the holding of an inquiry by authorizing the Minister to appoint, without nomination a member of the committee to represent the party refusing to nominate a representative. If the committee were unable to agree on a settlement, the dispute was to be referred to an "arbitration" board which had power to summon witnesses and call for the production of documents. The Railway Labour Disputes Act applied to the Crown and its provisions were utilized in two disputes involving the Intercolonial Railway and one dispute involving the Canadian National Railway in 1921. In 1906 the Conciliation Act and the Railway Labour Disputes Act were consolidated and became known as the Conciliation and Labour Act.

Industrial Disputes Investigation Act 1907

The Industrial Disputes Investigation Act represented the first real attempt at setting up machinery for the settling of labour disputes on a national scale and was prompted by a coal miner's strike in Alberta which caused a serious shortage of fuel in the prairie provinces. The principles of compulsory investigation by a government-appointed board and reliance on public opinion as a final court of appeal were incorporated and to them was added a more coercive element in the prohibition of a stoppage of work pending investigation. The main provisions of the Act had to do only with mines, transportation and communication agencies, and with gas, electric, water and power works where ten or more persons were employed. Its machinery could be applied, however, to any dispute in industries other than those mentioned if both parties to the dispute consented.

Width of Application of the Act

It was in connection with the extent to which the Act was to apply that difficulty in administration arose. The main issue here was the question of jurisdiction as between the Dominion and the provinces in cases of disputes involving provincial or municipal employees. In 1911, the Montreal Street Railway Company challenged the Dominion's power to enact such a statute. A Quebec Superior Court upheld the validity of the Act on the ground that the subject matter had a general or national importance and was connected with the peace, order and good government of Canada. Despite this ruling during the early days

of the life of this statute it was a practice to establish a board in a dispute involving municipal utilities only in the absence of a distinct protest by the municipality on the ground of jurisdiction. In fact up until 1923, the department adopted the policy of applying the Act to provincial or municipal disputes only by joint consent of the parties concerned.

In 1923 a board was established in a case involving the Toronto Electric Commissioners, a municipal body. A restraining order applied for by the Commissioners was granted and the whole question of the validity of the Act was brought to a head. The Ontario Court of Appeal upheld the Act, ruling that it provided machinery for inquiry into disputes which might and in other cases would, develop into disputes affecting not merely the immediate parties thereto, but the national welfare, peace, order and safety and also the national trade and business. However the Judicial Committee of the Privy Council reversed this decision in January, 1925, agreeing with Mr. Justice Hodgins of the Ontario Court, that the Act was one primarily affecting property and civil rights, a subject reserved to the provincial legislature except in the case of a national emergency.

The Industrial Disputes Investigation Act was, thereupon, amended to restrict it, in the first instance, to disputes within its scope which were in connection with works within Dominion jurisdiction, and, second, to enable its application to disputes within its scope which were within the jurisdiction of any province on enactment of the provincial legislature of a statute declaring the Act to apply. Works within Dominion jurisdiction to which the Act was declared to apply in particular were in connection with navigation and shipping, railways, canals, telegraphs and other works extending beyond the bounds of any province. Also the Act was to apply to works carried on by aliens or by companies incorporated under Dominion authority, or undertakings declared by Parliament to be for the general advantage of Canada or of two or more provinces. Thus it is seen how the Act was restricted to only works within Dominion jurisdiction and those under Provincial jurisdiction where those individual provinces desired to have the Act apply. Between 1925 and 1932 all the provinces except Prince Edward Island enacted laws bringing the Dominion statute into force in their respective jurisdictions. From 1932 to 1937 this situation remained unchanged. In the latter years, British Columbia repealed the enabling Act of that province and Alberta and Saskatchewan took the same action in 1944 and 1945 respectively.

Background of the Wartime Labour Relations Regulations

In November, 1939, the scope of the Industrial Disputes Investigation Act was extended, under the authority of the War Measures Act, to defence projects and to industries producing war supplies, including articles deemed essential by the Minister of Labour for the war effort or to the life of the community. A year later when the number of applications for boards and the shortage of experienced conciliators combined to slow up the operation of the Act, provision was made by Order in Council for settling as many differences as possible through inquiry and mediation by one or more commissioners. Commissioners were able to dispose of a great many cases, but the insistent demands of labour for collective agreements and the continued opposition of some employers to collective bargaining demanded further action. Thus Order in Council P.C. 1003 or the Wartime Labour Relations Regulations was passed on February 17, 1944, suspending the operation of the Industrial Disputes Investigation Act and so much of certain Orders in Council as were in conflict with the new Order.

Summary

Canada's position as regards legislation concerning labour disputes, up until

the passage of the Wartime Labour Relations Regulations might be summarized as follows. The Dominion had the Conciliation and Labour Act providing mediation services and the Industrial Disputes Investigation Act requiring conciliation and investigation before a stoppage of work was permitted in connection with such mines, transport and communication agencies, gas, electric, water and power works, as were in the Dominion legislative field, and through provincial legislation, to such of the same industries as were within provincial scope in Nova Scotia, New Brunswick, Quebec, Ontario and Manitoba. The Industrial Disputes Investigation Act, which had been extended in November, 1939, to war industries, was suspended on March 20, 1944, during the life of the Wartime Labour Relations Regulations.

Of the provinces, apart from wartime measures, Alberta, British Columbia, Manitoba, New Brunswick and Quebec had statutes providing machinery similar to that of the Industrial Disputes Investigation Act and forbidding strikes or lockouts while the machinery was in operation.

In general summary it can be said that up until the passage of the Industrial Disputes Investigation Act in 1907, there was no real attempt to set up any definite machinery for the settlement of Industrial Disputes. Following the passage of this Act which was to remain in force until 1944, Canada saw the first indications of the trouble it was to have in the future in trying to draft a truly national labour code. This was the reluctance of the individual provinces to give up any of their powers as regards the settlement of disputes which were strictly within provincial jurisdiction. Thus any national code would necessarily be restricted to those industries which could be shown to affect the welfare of the Dominion as a whole or the welfare of two or more individual provinces.

THE WARTIME LABOUR RELATIONS REGULATIONS

Up until 1939 it was legal and lawful for an employer to discharge or refuse to hire an employee for any reason, good, bad or indifferent including naturally, union activity. Up until that time the government would from time to time call attention to the mutual obligations of employers and employees in a democratic society but these admonitions were wasted on those to whom collective bargaining was obnoxious in its very essence.

In 1939 the Government of Canada took its first short step towards the establishment of *compulsory collective bargaining*. By amending the Criminal Code (Section 502A) it provided that no employer should wrongfully and without lawful authority refuse to employ or dismiss from his employ any person for the sole reason that he was a member of a trade union. In 1941, the federal Minister of Labour took power to reinstate employees who had been discharged or discriminated against for union activity and on January 19, 1943, his powers were extended[1] so that he was allowed to appoint an Industrial Disputes Inquiry Commission for the purpose of investigating any situation which, in his opinion appeared to be detrimental to the most effective utilization of labour in the war effort. The Commission was to report its findings and recommendations to the Minister of Labour who was to take such steps as he deemed necessary and desireable to effect such recommendations.

The National War Labour Board also conducted an enquiry into collective bargaining in Canada around this time and following the submission of the Board's report, the federal government prepared and submitted to the provinces and to representative groups of employers and employees, a draft labour code.

[1] Labour Gazette - Vols. 31 and 43, P.C. 4020 Sec. 5, June 6, 1941, added to by P.C. 4844, July 2, 1941, as amended by P.C. 7068 Sept. 10, 1941 and P.C. 4175 of May 20, 1943, (Ottawa; King's Printer, 1941 and 1943.

This code, revised after hearing representations from the interested parties, was enacted as an Order in Council, P.C. 1003 February 17, 1944, bearing the title, The Wartime Labour Relations Regulations.

Coverage

In order to show the actual workings of this Order in Council, it has been referred to throughout in the present tense even though the Regulations do not represent legislation now in force. The Regulations cover automatically those industries which fall within the federal jurisdiction in normal times. They also cover certain designated industries listed in Schedule A to the Regulations and which generally may be referred to as war industries. There was also a provision enabling the provinces to make the Regulations applicable to "provincial Industries" or industries which did not fall within the classes just mentioned.

Effect

This Act empowered the Lieutenant-Governor in Council to make the Regulations applicable to industries which remained within the exclusive jurisdiction of the province and it also created the Ontario Labour Relations Board. By agreement between the Dominion and the Province of Ontario, confirmed by Order in Council P.C. 2911 of April 27, 1944, the jurisdiction conferred by the Wartime Labour Relations Board (National) in respect of war industries and provincial industries was delegated to the Ontario Labour Relations Board, the Lieutenant-Governor having by Order in Council declared the Regulations applicable to provincial industries. Thus, subject to a few exceptions, the Ontario Labour Relations Board enjoys original jurisdiction over all industries which normally come within the exclusive legislative jurisdiction of the province under Section 92 of the British North America Act.

Length of Effect

As far as Ontario is concerned, the Labour Relations Board Act (Section 2 (2)) declares that the Regulations "shall, subject to any order of the Lieutenant Governor in Council, have the same force and effect as an Act of this Legislature and shall continue in full force and effect notwithstanding any revocation or amendment thereof made under the War Measures Act (Canada) and notwithstanding that because of the termination of the war or for any other reason they may become inoperative as regulations under the War Measures Act."

Composition of the Regulations

The Order in Council itself is composed of four main sections with several smaller sections. The main sections cover (1) Certification of Bargaining Representatives (2) Unfair Practices (3) Negotiation of Collective Agreement and (4) Enforcement or Penalty Provisions. The smaller sections of the Act cover in order (1) Interpretation of Words within the Act (2) Application of the Regulations Contained (3) Rights of Employees and Employers (4) Duration and Renewal of Agreements (5) Strikes and Lockouts (6) Grievance Procedure (7) Information (8) Administration of the Act (9) Conciliation Officers and Boards and (10) A General and Miscellaneous Section. For purposes of comparison the author has tried to take the actual body out of each of the main headings of the Regulations and put it down in as clear and concise a way as possible as each individual heading is discussed. [2]

Certification of Bargaining Representatives

The first requirement under this section of the Act is that the proposed bargaining representatives must truly represent the free choice of the workers in-

[2] All quotations from the statutes represent condensations of the sections under each heading both in this chapter as regards the Wartime Labour Relations Regulations and chapter III as regards the Industrial Relations and Disputes Investigation Act.

volved. This is determined by the following rules:

The employees must elect bargaining representatives by a majority vote of the employees affected.

If the majority of the employees affected are members of one trade union, that trade union may elect or appoint its officers or other persons as bargaining representatives on behalf of all the employees affected.

In the case of more than one employer and their employees, bargaining representatives may be elected by a majority vote of the employees affected of each employer. If the majority of the employees affected of each employer are members of one trade union, that union may elect or oppoint its officers or other persons as bargaining representatives on behalf of all the employees affected.

In cases where the majority of a group of employees belong to a craft by reason of which they are distinguishable from the employees as a whole and are organized into a trade union pretaining to the craft, such trade union may elect or appoint its officers or other persons as bargaining representatives on behalf of the employees belonging to that craft. Where any group claims the rights of this subsection they are not entitled to vote for any of the purposes of collective bargaining with that employer except where the bargaining is in respect only to the craft to which they belong. Also they are not considered in the computation of a majority in respect of any matter to which they are not entitled to vote.

Two or more trade unions may, by agreement, join in electing bargaining representatives on terms consistant with these regulations.

When bargaining representatives have been elected or appointed, application is made to the Board by or on behalf of such representatives for their certification as the bargaining agents for the employees. The Board checks carefully to assure that the election or appointment of representatives was regularly and properly made, that the trade union acted with the authority of the majority of the employees affected and that the unit of employees concerned is one which is appropriate for collective bargaining. When the Board is satisfied that the bargaining representatives truly represent the will of the majority of the employees concerned it certifies them as bargaining representatives and specifies the unit of employees on whose behalf the representatives so certified are authorized to act. Once bargaining representatives have been certified the Board notifies the applicants and the employer of the certification.

Unfair Practices

The Act lays out definite practices which are considered a direct violation of the statute.

No employer is allowed to interfere in any way with the formation or administration of a trade union or employee's organization or contribute financial or other support to it. He may however allow a union man to conduct union activity during working hours without deducting from the man's pay for time spent on union work.

No employer or employer's organization can refuse to employ any man because he is a member of a union or employee organization or impose any conditions seeking to restrain him from exercising his rights under these regulations or by means of any threat or penalty whatsoever try to compel an employee from becoming or continuing to be, a member of a trade union or employee organization.

No person can use coercion or intimidation of any kind with a view to compelling or influencing a person to join a trade union or employee organiza-

tion. This subsection however, does not pretend to prohibit the inclusion of a provision in a collective agreement.

The union or employee's organization cannot, without the consent of the employer, attempt to persuade an employee to join the organization at his place of employment and during working hours.

No trade union or employee's organization can support, condone or engage in any activity designed to restrict or limit production. This subsection however, in no way can be interpreted as limiting a trade union's right to strike.

No trade union or employee organization can in anyway participate in or interfere with the formation or administration of an employer's organization.

Negotiation of Collective Agreement

Once the bargaining representatives have been certified they may give the employer concerned or he may give them ten clear days requiring that he or they as the case may be enter into negotiations to complete a collective agreement.

Both parties must make every reasonable effort to conclude a collective agreement.

The bargaining representatives may be accompanied during the negotiations, at their own request, by officers or agents of the trade union or employee's organization concerned.

No collective agreement containing wage provisions shall be executed insofar as it involves any change in wage rates or provisions until the appropriate War Labour Board has approved such change.

Every party to a collective agreement shall do everything he is, by the collective agreement, required to do and shall abstain from doing anything he is, by same required not to do.

If negotiations for an agreement have continued for thirty days and it is believed an agreement will not be completed in a reasonable time, either party may advise the Board of the difficulties encountered and ask the Board to intervene to assist in the completion of an agreement.

Upon receipt of such advice the Board shall refer the matter to the Minister who must within three days instruct a conciliation officer to confer with the parties and attempt to effect an agreement.

The conciliation officer shall, within fourteen days of receiving his instruction or longer period as the Minister may allow, report to the Minister setting out in full. (1) The matters upon which the parties cannot agree and his recommendations in regard thereto (2) the terms, if any, upon which the parties have agreed and (3) whether in his view, an agreement might be facilitated by appointment of a Conciliation Board.

If a Conciliation Board is recommended the Minister shall appoint one consisting of three members appointed by him after consultation with the parties as required by section thirty.

The Conciliation Board upon its appointment shall endeavour to effect an agreement between the parties on the matters on which they have not agreed and in any event shall report the result of its findings and recommendations to the Minister within fourteen days of the appointment of the chairman thereof, or within such longer period as maybe agreed upon by the parties, or as may be allowed by the Minister.

If no agreement is reached by the Conciliation Board the Minister shall cause a copy of the report to be sent to the parties and to the Board and he may publish it in such manner as he thinks fit.

Enforcement

Every employer who declares or causes a lockout contrary to the regulations of the Act is guilty of an offence and liable upon summary conviction to a fine of not more than five hundred dollars for each day or part of a day that the lockout exists.

Every employee who goes on strike contrary to these regulations is guilty of an offence and liable upon summary conviction to a fine of not more than twenty dollars for each day or part of a day that the strike continues.

Every trade union or employee's organization that authorizes a strike contrary to these regulations is guilty of an offence and liable on summary conviction to a fine of not more than two hundred dollars for each day or part of a day that the strike continues.

Every person, trade union, employee's organization or employer's organization who contravenes any of the provisions of these regulations is guilty of an offence and unless some specific penalty is provided by these regulations for such contravention, liable on summary conviction, if an individual to a penalty of not more than one hundred dollars and if a corporation, employer's organization, employee's organization or trade union to a penalty of not more than five hundred dollars.

Every person is liable to a fine not exceeding five thousand dollars and not less than five hundred dollars or to imprisonment for a term not exceeding five years and not less than six months or to both such fine and such imprisonment who corruptly (a) makes any offer, proposal, gift, loan or promise or in any way directly or indirectly gives or offers any compensation to a person concerned in the administration or endorsement of these regulations or expected to have any such duties, for the purpose of influencing such person in the performance of his duties or (b) being a person concerned in the administration or enforcement of these regulations or having or expected to have any duties to perform thereunder, accepts or agrees to accept or allows to be accepted by any person under his control or for his benefit any such offer, proposal, gift, loan, promise, compensation or consideration.

Any person is guilty of an offence under these regulations who (a) commits the offence (b) in any way aids or abets the commission of the offence or (c) counsels or procures any person to commit the offence.

If any employer's organization, corporation, trade union or employee's organization is guilty of an offence under these regulations any officer of same who assented to the commission of the offence is a party to and guilty of the offence.

No prosecution for an offence under these regulations shall be instituted except by or with the consent of the Board, evidenced by a certificate signed by or on behalf of the chairman of the Board.

FAULTS OF THE WARTIME LABOUR RELATIONS REGULATIONS

GENERAL POINT OF VIEW

Trade unions are generally of two types (a) Craft unions or unions whose members are all of one trade or calling and (b) Industrial unions or unions which admit to membership workers in an industry irrespective of their occupation or craft. The Wartime Labour Relations Regulations makes statutory what is known in the United States as the "Globe Formula." This means that it gives the craft organization an opportunity to have its own organization or bargaining unit within the larger labour force — (Section 4 under Certification of Bargaining Representatives).

However, in many cases the word "craft" becomes ambiguous in its application. In the case of "Western Grocers Limited versus the Retail Clerks Protective Association" — IDL-S 7-508 there are the following facts. A grocer's warehouse with twenty-three persons employed, composed of ten general workers and thirteen office workers. The question is, was there one or two bargaining units? The Saskatchewan Board said that the ten production workers formed a bargaining unit and the National Board said they did not, because the ten production workers worked from the warehouse to the office. Actually if the ten formed a craft union which could be specifically marked off, they would be eligible for unit recognition under P.C. 1003.

The question of who are "employees" also causes trouble. P.C. 1003 definitely excludes some classifications and these are:

(1) those people employed in a confidential capacity
(2) those having authority to employ or discharge employees
(3) those employed in domestic service, agriculture, horticulture, hunting or trapping

Thus top management is clearly excluded. Therefore, is a foreman excluded? He may be employed in a confidential capacity and yet not have the authority to employ or discharge employees. On the other hand he may be only the leader of a group, and therefore simply an employee not excluded from collective bargaining. An actual case will serve to show the ambiguity involved. In the *Fire Bosses Case* I DL-S 7-535 the Fire Boss was a coalminer examiner. He had the authority to send a man home but not to fire him. In this case he was held to be an employee and subject to the workings of the legislation.

As regards the wording of the clause "as employed in a confidential capacity." This word "confidential" also causes trouble. In the case of the *Brotherhood of Railway and Steamship Clerks versus the Canadian Pacific Railway* 1946 D 4-S 7-611 the National Board held that clerical workers in accounting offices were not confidential employees even if they did work on time sheets, payrolls and had access to the companies' vital information. Therefore, there are many cases where the word *confidential* is ambiguous in its application.

Another case where the legislation is weak, is in the section covering negotiation for a collective agreement. Section 10 of P.C. 1003 imposes the *obligation of good faith* on both parties in negotiation for such an agreement. This does not require in exact language that the parties make an agreement but the machinery of the Act is so set up as to make it almost certain that some sort of collective agreement will result from negotiations. Therefore, under this legislation does good faith require that proposals and counter proposals be put in writing? Does good faith require that both parties have available people with power to conclude the agreement? Does good faith prevent a party stating in advance that it will not accede to certain terms proposed by the other?

It is readily seen that number of instances can arise where the term "good faith" is very difficult to judge. In the case of *"Amalgamated Bakers and Confectionery Workers of Canada (Toronto) versus Canada Bread"* 1945 I D 4-6, 7-1167 Canada Bread refused to make any agreement except on *its terms*. This appears to represent a lack of good faith and yet the Board dodged by referring the matter to a conciliation officer. Again the question of "good faith" arises where parties fail to bargain or negotiate on the basis of recommendations of the Board of Conciliation. It appears that this is not lack of good faith if the parties fail to accept the Board's recommendations as they are not binding but evidently it is intimated that the parties should meet and negotiate on them although the regulations do not state whether Section 10 definitely extends that far or not.

Management Point of View

The Canadian Manufacturers Association in the brief which it filed with the Dominion Government set out a number of amendments which it believed should be made to the code. Chief of these amendments were as follows:

It should be made clear that employees have the right to chose an independent employee's association as their bargaining representatives if they so desire. In other words the right of the employees to absolute freedom of choice of their bargaining representatives should be established.

The word employee should be defined so as to exclude persons who do supervisory work and who can effect changes in the conditions of employment, or can recommend such changes. "It is anomalous and unsound that employees closely associated with management as are most foremen, should be included in bargaining units for the purpose of bargaining collectively with management." [3]

Criticisms of P.C. 1003 *from a Labour Point of View*

The following are critisms of P.C. 1003 made by the Canadian Congress of Labour in a brief presented to the Dominion Government on April 25, 1945.

Procedure should be made for the certification of unions instead of individuals as bargaining agencies.

Provision should be made that in a union representation vote, a majority of the employees participating in the vote shall be sufficient to constitute the decision, providing that a majority of the eligible employees actually participate.

The outlawing of company unions.

Provision that the Board may order the inclusion in agreements of union security clauses such as "union shop" or "closed shop."

Provision that an employer be required to institute the checkoff of union dues upon request from a union representing the majority of the employees, and upon the written authorization of individual employees.

Hastening of the procedure under which Boards of Conciliation are established.

Provision that the grievance procedure required to be inserted in an agreement under the present terms of the Regulations be extended so as to cover all grievances and not merely those arising out of misinterpretation or violation of the agreement.

Criticisms of P.C. 1003 *from the Author's Point of View*

It does not secure to the worker the right to bargain collectively, as the anti-union employer does not have to negotiate. Section 4, Subsection 3, states "Where bargaining representatives or the employee's employer *may*, in accordance with the procedure hereinafter set out, enter into negotiations with a view to the completion of a collective agreement." In other words, after the union has successfully been certified by the War Labour Relations Board as a bargaining agency to represent the workers in negotiations, the employer may negotiate — if he wants to!

The phrase "trade union or employees organization" is used throughout and employees organization nine times out of ten means a company union. Employers can easily aid or abett such a union because neither the fines of one hundred dollars nor five hundred dollars will be a strong deterrent and therefore, there is nothing to prevent the recognition of the company union as the bargaining agency, even if the employer is fined.

[3] **Industrial Canada** (Toronto, Canadian Manufacturing Assen.) Vol. XLVI-6 P. 95.

Section 19 says "an employer may, notwithstanding the foregoing, permit an employee or a representative of a trade union or an employee's organization to confer with him during working hours or to attend to the business of the organization or trade union during working hours without deduction of time so occupied in the computation of the time worked for the employer and without deduction of wages with respect thereof." Thus the employer can absolutely forbid any union organization in the plant, while encouraging the company union to do all its organizing in working hours. Thus a possible set up is provided for the encouragement and protection of company unions.

The legislation nullifies the ordinary practices of democracy by insisting on a majority, not of the votes cast but of the potential vote.

Finally nothing is said as to what happens if the employer refuses to negotiate in the first instance.

General Conclusions

It might be said that the main faults of P.C. 1003 could be briefly summarized as follows:

It is a temporary measure.

It does not give the right to the worker to bargain collectively.

It is written in a way so that company unions could be protected if necessary.

It nullifies the ordinary practice of democracy by demanding a majority not of the votes cast but rather a majority of the potential vote.

THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT

Since the Wartime Labour Relations Regulations or Order in Council P.C. 1003 was issued under authority of the War Measures Act it was recognized that the regulations would disappear with the war emergency. It was also recognized that these regulations represented only an Order in Council and not definite labour legislation. Labour relations as such had not been the subject of legislation in Parliament since the beginning of the war. Thus aside from the other criticisms which had been levelled at the wartime regulations, the need for a permanent body of labour laws and regulations for both the Dominion and provinces became a matter of prime importance. In May, 1947, Order in Council P.C. 1003 ceased to be effective and the provinces resumed the exercise of their normal powers so that Canada was once more without even the semblance of an overall national labour code. It was recognized that a national labour code could not be devised which would suit every individual province in the country but it could be seen that if a good code was set up, it could serve as a model for similar provincial labour legislation. Thus Canada could obtain the most uniform labour code possible in a country peopled by two distinct major racial groups.

After much organization and research a bill entitled The Industrial Relations and Disputes Investigation Act was introduced into Parliament for its first reading on June 17, 1948. This Bill was intended to replace the original Industrial Disputes Investigations Act of 1907 and overhaul the workings of Order in Council P.C. 1003, combining all the best features of both pieces of legislation. Ontario Minister of Labour Daley, during a speech made over the Canadian Broadcasting Corporation on February 24, 1948, concerning the new Act made the flat statement that the new code would be accepted by the Ontario Legislature. "A bill will be introduced which will enable the necessary administrative arrangements to be made and the Dominion code to be applied to all provincial works, undertakings or businesses strictly within the provincial field. The result will be that one code will apply to all labour relations within Ontario without dis-

tinction between Dominion or provincial works, undertakings or businesses." [4] Thus even before the Act had become law, a step in the right direction had been taken by one of the provinces towards uniform nation-wide labour legislation.

The Act itself had its final reading and became law on September 1, 1948, crowning the trade union with full and sole authority for making collective bargaining agreements with the employers on behalf of workers. At the same time the union was delegated a fuller measure of responsibility for keeping peace on the labour front. These two points might be said to form the main underlying philosophy of the new Act.

Length of Effect

Unlike P.C. 1003 which was only an Order in Council and as such issued under authority of the War Measures Act, the Industrial Relations and Disputes Investigation Act represents an Act of the Dominion Legislature and as such shall continue indefinitely in full force and effect, until such times as it is revoked or amended.

Composition of the Act

The Act itself is divided into two main parts, the first dealing with the interpretation of the Act and the second dealing with its application and administration. The main sections under part one cover (1) Unfair Labour Practices (2) Collective Bargaining (3) Collective Agreements (4) Conciliation Proceedings and (5) Enforcement or Penalty Provisions. The sub-headings cover in order (1) Rights of Employees and Employers (2) Application for Certification of Bargaining Agents (3) Certification (4) Effect of Certification (5) Revocation of Certification (6) Notice to Negotiate (7) Negotiation (8) Conciliation (9) Strikes and Lockouts (10) Constitution of Conciliation Boards (11) Terms of Reference and finally a General Section covering Miscellaneous Points. Under Part II the sections cover in order (1) Industrial Inquiries (2) Constitution of Canada Labour Relations Board (3) The Powers of the Board (4) Arrangements with Provinces (5) Conciliation Boards (6) Regulations and (7) Continuation of the Canada Labour Relations Board as successor to the Wartime Labour Relations Board.

Unfair Labour Practices

The Act lays out definite practices which are considered a direct violation of the statute. However, these practices which are considered unfair under this Act are practically the same as those contained in the Wartime Regulations.

> No employer or employee's organization, and no person acting on behalf of an employer or employer's organization, shall participate in or interfere with the formation or administration of a trade union. This section however, contains a proviso that an employer may permit an employee or representative of a trade union to confer with him during working hours or attend to the business of the organization during working hours without deduction of pay for the time so worked. It also provides that the employer may provide free transportation to trade union representatives for purposes of collective bargaining or permit a trade union the use of his premises for the purposes of the trade union.
>
> No employer, and no person acting on behalf of an employer shall refuse to employ or to continue to employ any person, or otherwise discriminate against any person in regard to employment or any term or condition of employment, because the person is a member of a trade union. Neither shall he impose any condition in a contract of employment seeking to re-

[4] The London Free Press, February 25, 1948

strain an employee from exercising his rights under this Act. Thus no employer shall deny to any employee any pension rights or benefits to which he would otherwise be entitled by reason only of his ceasing to work as the result of a lockout or while taking part in a concerted stoppage of work due to a labour dispute. This of course, only where such lockout or stoppage of work has been enforced by the employer or called by the recognized representative of such employee after all steps provided by law have been taken through negotiation, collective bargaining, and arbitration to settle such dispute or by reason only of dismissal contrary to the Act.

No employer or person acting on his behalf shall seek by intimidation, threat of dismissal, or any other kind of threat or penalty or by *any* other means to compel an employee to refrain from becoming or to cease to be a member or officer or representative of a trade union.

Nothing in the Act shall be interpreted to affect the right of an employer to suspend, transfer, lay off or discharge an employee for proper and sufficient cause.

Except with the consent of the employer, no trade union or member acting on its behalf shall attemtp at an employer's place of employment during the working hours of an employee of the employer, to persuade the employee to become or refrain from becoming or continuing to be a member of a trade union.

Nothing in the Act prohibits the parties to a collective agreement from inserting in such an agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified trade union.

No provision in a collective agreement requiring an employer to discharge an employee because such employee is or continues to be a member of, or engages in activities on behalf of a union other than a specified trade union, shall be valid.

Negotiation

Once the trade union has been certified as the bargaining agent of the employees, this agent and the emplover or employer's organization shall meet as soon as notice has been given, but in any case within *twenty* clear days after such notice has been given or such further time as the parties may agree, to commence to bargain collectively with one another and shall make every reasonable effort to conclude a collective agreement. This clause differs markedly from the original wartime regulations where only *ten* clear days were given in which to commence negotiations.

The emplover shall not, without consent by, or on behalf of the employees affected, decrease rates of wages or alter any other term or condition of emplovment of emplovees in the unit for which the bargaining agent is certified until a collective agreement has been concluded or until a Conciliation Board appointed to endeavour to bring about agreement has reported to the Minister and seven davs have elapsed after the report has been received by the Minister. whichever is earlier, or until the Minister has advised the emplover that he has decided not to appoint a Conciliation Board. This section also is new as compared to any previously existing legislation.

Collective Agreements

The effect of collective agreements themselves as to their being binding on agent, employer and employee, is much the same as under the old wartime regulations.

A collective agreement entered into by a certified bargaining agent is, sub-

ject to and for the purposes of the Act binding upon (a) the bargaining agent and every employee in the unit of employees for which the bargaining agent has been certified (b) the employer who has entered into the agreement or on whose behalf the agreement has been entered into.

Every collective agreement entered into after the commencement of the Act shall contain a provision for final settlement without stoppage of work.

Where the collective agreement does not contain such a provision for final settlement the Board shall, upon application of either party to the agreement, by order, prescribe a provision for such purpose and such provision shall be deemed to be a term of the collective agreement and binding on the parties to and all persons bound by the agreement.

Every party to and every person bound by the agreement shall comply with this provision for final settlement contained in the agreement.

Every collective agreement is deemed to be for a term of one year from the date upon which it came or comes into operation. If such a term is indeterminate, it is automatically deemed to be for a period of at least one year from its operation date and shall not be terminated by either of the parties within a period of one year from that date, except as provided by Section Ten of the Act with consent of the Board.

Conciliation Proceedings

It is in this section concerning conciliation proceedings that it is seen how the Act gives the Minister of Labour indeterminable time in which to hold up strike proceedings. The procedure is as follows — Where a conciliation officer has been instructed to confer with parties engaged in collective bargaining or to any dispute he must within fourteen days after being so instructed or *within such longer period as the Minister may from time to time allow* make a report to the Minister setting out:

(a) The matters, if any, upon which the parties have agreed.
(b) The matters, if any, upon which the parties cannot agree.
(c) As to the advisability of appointing a Conciliation Board with a view to effecting an agreement.

The Board of Conciliation and Investigation under this Act shall consist of three members appointed in the manner provided in Section 28 of the Act.

The main points are:

Each party shall nominate one person to be a member of the Conciliation Board within seven days after receipt of written notice from the Minister of Labour of his decision to form a Board.

If either party fails to nominate a person within seven days the Minister appoints one for them.

The two members appointed shall within five days after the second is appointed, nominate a third person who is ready and willing to be a member and Chairman of the Board and the Minister ratifies this appointment.

If any person ceases to be a member of a Conciliation Board before it has completed its work, the Minister shall appoint a member in his place who shall be selected in the manner prescribed by the Act.

The Conciliation Board shall endeavour to bring about agreement between the parties according to the rules laid out under Section 32 of the Act and the report of the majority of the members is deemed to be the report of the Conciliation Board.

After a Conciliation Board has made its report, the Minister may direct it to reconsider and clarify or amplify the report or any part thereof or to consider and report on any new matter added to the amended statement of matters

referred to it *and the report of the Conciliation Board shall not be deemed to be received by the Minister until such reconsidered report is received.* This section again illustrates the great powers to hold up strike action given to the Minister of Labour by this Act.

Section 33 of the Act lays out the powers of the Board concerning the summoning of witnesses, administration of oath and the Board's rights of entry and inspection. The Report of the Board itself shall within fourteen days after the appointment of the Chairman, or within such longer period as may be agreed upon by the parties or as may from time to time be allowed by the Minister, be forwarded to the Minister containing the Board's findings and recommendations. This reveals another real opportunity to stall strike action. Further detailed discussion of these loopholes will be carried out in Chapter IV.

Enforcement

Every employer who decreases a wage rate or alters any term or condition of employment or in other words contravenes sections fourteen or fifteen of the Act is guilty of an offence and liable on summary conviction to a fine not exceeding (a) five dollars in respect of each employee whose wage rate was so decreased or whose term or condition of employment was so altered or (b) two hundred and fifty dollars, whichever is the lesser, for each day during which such decrease or alteration continues contrary to the Act.

In addition every person, trade union and employer's organization who violates in any way the unfair labour practices as outlined in sections four and five of the Act is guilty of an offence. These unfair practices cover (1) Employer interference with trade unions (2) Discrimination against trade union members (3) Preservation of employee's rights under the Act (4) Use of intimidation or threats against trade unionism and (5) The practice of soliciting memberships in unions during working hours. If found guilty the parties are liable upon summary conviction, (a) if an individual, to a fine not exceeding one hundred dollars or (b) if a corporation, trade union or employer's organization to a fine not exceeding one thousand dollars.

Where an employer is convicted of having suspended, transferred, laid off or discharged an employee contrary to the Act, the convicting judge, court or magistrate, in addition to any other penalty authorized by the Act may order the employer to pay compensation for loss of employment to the employee not exceeding such sum as is equivalent to the wages, salary or other remuneration that would have accrued to the employee up to the date of his transfer, suspension, lay-off or discharge. In addition such court may order the employer to reinstate the employee at such date as in the opinion of the court, judge or magistrate is just and proper in the circumstances, in the position which the employee would have held but for such suspension, transfer, lay-off or discharge.

CHIEF DIFFERENCES EXISTING BETWEEN P.C. 1003 AND THE NEW ACT

From a comparison of the main sections of both pieces of legislation, the following chief differences are brought to light in the new Act.

Trade unions are to be certified as bargaining agents instead of groups of individuals in these unions as stipulated in the wartime order.

The Canada Labour Relations Board has wide powers of discretion in the field of certification and may revoke certification if it believes the union no longer represents a majority of employees. It may also certify a rival union after any collective bargaining agreement has been in force for ten months.

All collective bargaining agreements must contain provision for peaceful settlement of disputes. Strikes during the period of an agreement are outlawed.

Strikes may not be legally called until fourteen days after reports of Conciliation Boards have been received by the Minister, and no strike vote may be taken before that time. There is nothing, however in the Act to outlaw strikes after this period. Under P.C. 1003 the strike vote was called before conciliation.

Unions which, in the opinion of the Board, are employer-dominated may not be certfied.

In keeping with the shift of responsibility from the individual to the trade union, provision is made for penalty against the union as well as against employers' organizations. Trade unions declaring a strike in violation of the Act are liable to a fine on summary conviction of one hundred and fifty dollars per day for each day that the strike exists. Employers declaring a lockout contrary to the Act are liable to a fine of two hundred and fifty dollars for each day that the lockout exists. In addition, every person representing an employer is liable to a maximum fine of three hundred dollars in case of lockouts and every trade union officer to the same fine in case of strikes.

Employers convicted of violation of the Act through discharge of an employee can be forced, aside from any other penalty, to pay back wages.

The Labour Relations Board is given authority to examine complaints of failure to bargain collectively upon request of the Minister, and to give redress in these cases.

The definition of an "employee" for the purposes of collective bargaining and certification of unions has narrowed slightly those entitled to belong to bargaining units. All those exercising management functions are now excluded. On the other hand, definitions of confidential employees excluded has been limited to those employed in a confidential capacity *"in relation to labour relations"* P.C. 1003 made no such distinction.

Majorities for certification purposes must be composed of members of the particular union in good standing. The practice of allowing non-union members to give certificates of approval has been abolished.

Criticisms of the New Act from a Labour Point of View

The main objective voiced by Labour is that the new code is unnecessarily restricted. Under the code as adopted, the Dominion lacks authority to deal with disputes which become of national concern. Labour in general feels that industries which are national in scope should be brought under the Act and the government should have the power to step into disputes which concern the country as a whole. Not only has nothing been done in this direction, but power has been provided for nullification of the Act by the exclusion of Crown companies or any other class of employers and employees, the government sees fit.

Another objection is the failure to include "union security" and the "union dues checkoff" in the legislation.

The fact that the legislation is enforceable in the courts, rather than by the new Canada Labour Relations Board is undesirable. The method adopted would tend to be complicated, slow, doubtful and likely to be generally ineffective.

The penalties provided for refusal to bargain collectively are totally inadequate.

The section making collective agreements binding at law presents the possibility of lengthy and costly legal actions.

Power of the Board to revoke the certification of a union where it has lost a majority of employees in a bargaining unit is "dangerous" to new unions. An

employer could delay negotiations until the strength of a union was weakened and then launch proceedings to have its certification revoked.

The government had failed effectively to outlaw company unions.

General Summary — Author's Point of View

Generally speaking there has been very little criticism of the Act advanced from management's point of view. However, as has already been seen, Labour has advanced a number of criticisms.

The greatest objection, voiced by Labour has been the limited coverage of the Bill. It was strongly suggested by this body that provision should be made for dealing with nation-wide disputes which concern Canada as a whole in industries which normally come under the jurisdiction of different provinces. For example: The packing house strike of last year (1947) and the nation-wide steel strike of 1946. Here the Dominion could do nothing, and the provinces themselves had to deal severally with nation-wide employees and nation-wide unions. In such a national emergency the government is crippled.

Another sore point on the part of labour is national or industry-wide collective bargaining. It is specified that no trade union claiming to have as members in good standing a majority in an appropriate bargaining unit which extends to the employees of two or more employers may be certified as the bargaining agent except with the consent of all the employers affected. This, in effect, will give one employer a veto power over national or industry-wide bargaining. Apparently the philosophy behind this provision is that different employers would not be forced to join with one another for the purposes of collective bargaining. However, there are today corporations with many subsidiary companies, which to all intents and purposes are one corporation, but which, largely for tax purposes, are kept separate. Under this clause, the consent of all the subsidiary companies would have to be obtained before industry-wide collective bargaining could be initiated, even though it is actually the one corporation which is being dealt with.

The clause giving legal entity to the trade union also brings criticism from labour. Such a provision would render the union suable in a civil action for damages. This principle would strike at the fundamental concept of trade unionism —that it is a voluntary association of workers to which there should not be attached the same degree of liability as in the case of a corporation.

The Act also makes a union liable for a thing done or committed by an officer or agent of a union acting within the scope of his authority. This section may cause many difficulties in its application, for the law of agency was not designed for dealing with trade unions and its application to trade unions would be by no means simple.

The lack of adequate definition of the words "agent of a trade union" might, under judicial interpretation, lead to a national or international or central body being held responsible for every act done by a "local" agent which is considered to be an act done within the scope of his authority.

The position of foremen under the Act is still doubtful. The Bill does not clearly exclude foremen from its operation, although its wording would leave doubt as to whether foremen were intended to be covered. The issue is mainly one of definition of the term "employee" under the Act. It excludes any person employed in a "confidential capacity" but if the words "confidential capacity" are interpreted as laid down in previous decisions under wartime P.C. 1003, only those persons having the power to hire and discharge will be excluded from bargaining privileges.

Final Summary

In final summary it can be said that from management's point of view, the new Act appears to represent fair and acceptable legislation. Labour on the other hand has advanced some criticisms chief of which are the limited scope of the Bill and the obstacles placed in the way of national or industry-wide collective bargaining. Labour's feelings toward the new Act can best be summed up by this excerpt from a speech given by Percy R. Bengough, President of the Trades and Labour Congress of Canada at the Toronto Labour Day celebration September 6, 1948. "The Act is limited to the extent that Dominion authority is restricted from entering provincial operations and, so far, not sufficient recognition has been given to the advantages of uniform labour and social laws throughout Canada to bring about the much needed changes in the "horse and buggy" British North Amerca Act. However, the Act as passed, even with its limitations, is definitely progress." [5]

THE USE OF CONCILIATION

After a careful examination of the machinery established for the settlement of industrial disputes by the new Industrial Relations and Disputes Investigation Act it is seen that Canada has retained conciliation as the major weapon with which to preserve industrial peace. Every effort has been made to keep compulsion as much out of the picture as possible and whenever it appears that the workings of the Act might fail, openings have been left for the Minister of Labour to use his discretion. Thus every effort has been made to postpone strike action as long as it is humanly possible, the Minister of Labour in most cases being given an indefinite length of time before he is forced to hand the matter over to the courts for arbitration.

Loop Holes for Postponing Strike Action

A close examination of the section on conciliation proceedings in the Act shows the following places where opportunities for delaying strike action are evident. Section 27 of the Act reads "Where a Conciliation Officer has, under this Act, been instructed to confer with parties engaged in collective bargaining or to any dispute, he shall, within fourteen days after being so instructed *or within such longer period as the Minister may from time to time allow* make a report to the Minister." The Minister, when he receives this report may decide to appoint a Conciliation Board, or may not. However, under Section 21, subsection (b) of the Act both employees and employer are prevented from entering into strike or lockout action until first, such a Conciliation Board has sat and at least seven days have elapsed from the time their report has been forwarded to the Minister, or else secondly, where notice has not been given by the Minister to the parties concerned that he desires them to appoint one man to a Conciliation Board. Therefore, it is clear that the Minister can hold up strike action for an indefinite time by extending the time allowed to the Conciliation Officer to make his report to him.

Also under Section 31, subsection (2) of the Act the following is noted. "After a Conciliation Board has made its report the Minister may direct it to reconsider and clarify or amplify the report or any part thereof or to consider and report on any new matter added to the amended statement of matters referred to it *and the report of the Conciliation Board shall not be deemed to be received by the Minister until such reconsidered report is received.*" Again the Minister of Labour is given an excellent loophole by which he can defer strike action because he can keep on refusing to accept the report if he wishes to do so. As has been noticed previously, under Section 21, subsection (2) of the Act employees and employer

[5] The London Free Press, September 7, 1948

are prevented from taking any trike or lockout action until seven days have elapsed from the date on which the report of the Conciliation Board was received by the Minister.

Upon careful reading of Section 35 of the Act concerning the report of the Conciliation Board it is noted that another loophole is evident. This section reads as follows "A Conciliation Board shall within fourteen days after the appointment of the Chairman of the Board or within such longer period as may be agreed upon by the parties, or as *may from time to time be allowed by the Minister,* report its findings and recommendations to the Minister." Although *both* parties to the issue would have to agree to an extension of time before the report is handed in, the Minister of Labour still could extend the time without being obligated to anyone.

It is evident that the authors of the Industrial Relations and Disputes Investigation Act have provided every possible means of averting strike action and in so doing have provided the Minister of Labour with actually what amounts to dictatorial powers. However, the idea is not to make one man supreme in holding the power to prevent industrial strife but rather to place a rational, intelligent man in a position where he can exert his influence by holding up violent action until the two parties concerned can "cool off" long enough to settle their differences intelligently. In fact the fourteen day period granted the Conciliation Officer under Section 27 of the Act, before he must make his report to the Minister setting out

(a) the matters, if any, upon which the parties have agreed.
(b) the matters, if any, upon which the parties cannot agree, and
(c) as to the advisability of appointing a Conciliation Board with a view to effecting an agreement.

has often been referred to as a "cooling off" period. The underlying philosophy of this section of the Act seems to be, that rational, intelligent men, if they have a long enough period to get over their anger, can usually manage to sit down and reach an amicable solution to their problems.

The Act, as written has been drafted upon the principle of compulsion, but it is administered as much as possible as a voluntary measure. The experience of Canada with the operation of the original Industrial Disputes Investigation Act of 1907 seems to bear out this conclusion to a singular degree. The corroboration it offers is all the more significant because the original Canadian Act provided only for a temporary postponement of strikes and lockouts as contrasted with their complete prohibition in the case of compulsory arbitration.

Value of Conciliation

The chief value of conciliation, as revealed by Canadian experience, seems to lie in the fact that it enables those intervening in an industrial dispute to take a realistic view of the situation at hand. Thus since conciliators are not called upon to make a final decision on the basis of abstract justice, they can seek in each controversy that solution which will best resolve the conflict under consideration. Representing the public interest, the conciliators press upon the parties to the dispute, from the very outset and throughout the proceedings, the fact that interruption of service would constitute a danger to the whole community served by the industry concerned. Thus under this system the conciliators can seek to place squarely upon the shoulders of the employers and employees involved, the responsibility for arriving at an amicable settlement.

This system of making the parties concerned responsible for finding a satisfactory adjustment is sound for two reasons. In the first place, whatever settlement is finally made, must be translated into everyday practice by the employers

and employees involved. In the second place, it puts the actual details of working out the settlement into the hands of the people most familiar with the technical aspects of the industry in which the dispute has arisen. On the other hand, the conciliators are not confronted at all with the task of making final decisions. Their emphasis is not on the particular terms of a settlement but on arriving at a settlement. It is their responsibility to maintain uninterruptedly the processes of negotiation, on the theory that reasonable men discussing their differences step by step can arrive at an understanding.

Authority for Enforcement

In the actual provisions for the enforcement of the Act, conciliation can be seen as the reason behind vesting authority for enforcement in the courts rather than the Conciliation Board. If the Federal Government was to make a Conciliation Board which is representative of both management and labour, both a judge and a prosecutor at the same time, the whole purpose of the legislation would be lost. The main object of the legislation is to set up the Board as a conciliatory body. Therefore it is essential that such a Board should not be given the power to prosecute one or the other of the parties who might appear before it for conciliation. In addition there is a strong possibility that the Board would be overburdened, and its essential work cluttered up with prosecutions.

There are many arguments that can be advanced against this method of handling summary convictions. The main argument is that magistrates and justices of the peace in the police courts are on the whole, unfamiliar with industrial relations, and the proper authority for the determination of offences under the Act would be the Labour Relations Board itself, which would have the necessary broad approach. Another argument that has been advanced is that enforcement in the hands of the judiciary would involve considerable delay, with the infinite possibilities of raising technical points, and in the resolution of industrial disputes, speed is of the utmost importance. Both the Canadian Congress of Labour and the Canadian Brotherhood of Railway Engineers denounced this method of enforcement provided by summary conviction, in their briefs presented at Ottawa when the Bill was in its formative stages.

Canada's experience has been that Conciliation is the best approach to the settlement of Industrial Disputes, with its advantages as a method of settlement far outweighing those of compulsion. Therefore, since it has been pointed out that it is impossible to make a conciliatory body reach a fair unbiased judgment between parties who appear before it, the courts with their admitted disadvantages are the only alternative for final settlement. However, this fault is not extremely serious because of the fine conciliation machinery set up within the Act, designed to keep disputes under negotiation as long as possible and keep them from reaching the courts except as a final method of settlement.

Importance of Role of Minister of Labour

After a careful examination of the machinery of the whole Act based as it is upon conciliation, it becomes increasingly evident to the reader just how vital the role of the Minister of Labour is to the success of the whole legislation. The Minister is in a position which carries virtually dictatorial powers if he chooses to exercise them. Actually the whole piece of legislation could be compared to the machinery of the constitution of the Soviet Union. In both cases the machinery for good sensible government is there but the results obtained will be good or bad depending upon the way in which the legislation is administered. Thus administration actually is the key to the success or failure of the whole Act. The role of the Minister of Labour demands a man who possesses an absolutely fair, unbiased mind, a man who is rational, patient and above all, realizes the weight

of his responsibility and the consequences which will result from the exercise of his judgment. Because this position is so vital and so important, it is *essential* that the man to fill such a role should be chosen with the utmost care if the nation is to obtain the best possible results from legislation so brilliantly and understandingly written.

Summary

As to the sensibility of using "conciliation" as the main theme of our national labour code, the following can be said. Freedom from strikes cannot be obtained by compulsion. It can grow only out of good relations, a solution of the economic problems which cause strikes and on the part of both parties co-operating in making the collective bargaining arrangements serve the public as well as themselves. Policies to be successful must have the support of both parties. The best relations in industry cannot be obtained by the *compulsory* announcements of a third party, even though that body be a government labour board any more than can the best domestic relations be obtained by the continuous intervention of a court of domestic relations. The wiser and more fundamental policy, is to stimulate both management and union to such an attitude and to such an attack upon their own problems that both parties will realize the shortsightedness of policies which lead to a settlement of differences by a fight at the expense of the public.

CONCILIATION BOARDS

It has been pointed out how administrative responsibility for the success of the new Industrial Relations and Disputes Investigation Act is vested in the Minister of Labour. One of the main places in which he must exercise his discretion and good common sense is in those cases where he is frequently required to appoint Conciliation Board members. True, the law provides that two members of a Board are to be appointed upon the respective recommendations of the employers and employees involved, while the third, who acts as chairman, is to be appointed upon recommendation of the other two. But cases often arise in which either employers or employees fail to make a recommendation, and, even more often, cases arise in which the employers' and employees' representatives on Boards cannot agree upon a chairman. To the Minister of Labour, in these cases, falls the important task of naming the chairman or other members. Under ordinary circumstances where the Board members are appointed upon the recommendations of the principals involved it can be readily seen how upon their skill, comprehension and tact will depend the outcome of the cases referred to them, and consequently the success of the Act.

Separate Boards for Each Dispute

Under the workings of the Act a separate Board is established for each dispute and new members are appointed for each Board. This method possesses two main advantages. It avoids the risk of suspicion and antagonism, so often incurred where the personnel is permanent. In the second place, under the Canadian practice a panel of men who have distinguished themselves as successful conciliators is virtually created through repeated reappointments. It has been the experience of Canada to find that individuals who have succeeded in effecting settlements satisfactory to all parties in a dispute find themselves invariably called upon again and again to act as members of Boards. This has been the case ever since the passage of the original Industrial Disputes Investigation Act of 1907 which had a similar method of setting up Conciliation Boards for the settlement of disputes.

The other method of handling Boards is to have a permanent Board which will hear all disputes but it is interesting to note that Canada has not seen fit to

adopt this procedure although such a Board does have certain advantages. A permanent Board would avoid delays, inevitable when separate Boards are established, in appointing members, in arranging for hearings and in working out procedure. Also, members of a permanent Board can act with expedition in an emergency and repeated experience in dealing with disputes should give them familiarity with industrial conditions and render them more skilled in the difficult task of conciliation.

Main Advantages of Changing Personnel

The main points which seem to swing the scale in favour of having changing personnel for Boards are first, that if either employers or employees should feel dissatisfied with the procedure or report of any one Board, they can look forward to better results next time with a different Board and secondly there is a feeling of direct representation of interests when each side to a dispute has the opportunity of naming a member of the Board.

Under the new Act however, it is reasonable to believe that any dispute brought before a Conciliation Board will receive the advantages of both a changing and a permanent personnel of Boards. In the first place a new Board can be appointed for each dispute, and its members can proceed without the handicap of antagonisms incurred by decisions in previous disputes. In the second place, the long use since 1907 of Boards involving changing personnel has built up panels of men who are not only experienced in handling disputes but who have shown exceptional skill and success as conciliators.

Conciliation First Purpose of Boards

Section 32 of the Act reads as follows:

"A Conciliation Board shall, immediately after appointment of the Chairman thereof, endeavour to bring about agreement between the parties in relation to the matters referred to it." It is to be noted that "Conciliation Board" as used here in the Act is merely an abbreviated way of referring to the full title of "Board of Conciliation and Investigation as shown under Section 2, subsection (f) of the Act. Therefore Conciliation is the Board's first task and investigation is to be conducted to this end. Further, if settlement is not effected at once, the Board must continue to seek settlement by conciliation during the progress of its proceedings. If conciliation proves successful the Board reports the terms of settlement. However, if conciliation is not successful, the Board proceeds with its investigation and draws up recommendations for settlement, which it submits in its report to the Minister of Labour. Thus the provisions of the law specifically make conciliation the primary aim of the Act but nevertheless the Act is also a compulsory law in that it makes the submission of disputes mandatory.

General Procedure of Boards

A survey of the history of the general procedure followed by Boards since the original Industrial Disputes Investigation Act of 1907 shows that several definite steps have developed. Upon their constitution Boards have sought first to discover how much of the disputes submitted could be adjusted by voluntary negotiation, and for this purpose the two parties have been urged to get together by themselves. The confidence and co-operation of both employers and employees have been sought and free and informal discussion of all issues urged. During the hearings the Boards have attempted to bring about agreement on every issue possible and finally, decisions of Boards have been made only on points on which agreement between the parties in dispute has been impossible. Thus Conciliation Boards have come into the new Act with *an established procedure* which eliminates many of the smaller time-consiming differences and brings the

employer and employee together in an atmosphere conducive towards an amicable settlement of major points of dispute.

Further study of the long experience Canada has had with Conciliation Boards brings to light several other points in their method of operation which shows why they have been retained to form a vital part of the machinery of the new Industrial Relations and Disputes Investigation Act. Conciliation Boards appear to offer about the best system whereby employers and employees can meet and settle their differences, without having to make public much vital information. This fact is much appreciated by both employers and employees and as a result has given them a feeling of confidence and security in Boards so that they both have approached the conference table, secure in the knowledge that the Board will not use its compulsory powers to demand information they do not wish to divulge and confident that if they do reveal certain facts, these facts will not necessarily be revealed to the public. It does not require a person skilled in the settlement of disputes to realize that settlement is always easier when both parties realize that compulsion will not be employed against them to reveal information and also that any concessions or information they divulge will not be revealed to the public.

This method of operation of Boards has arisen as the result of experience over the years since the Board system was first used in the original Industrial Disputes Investigation Act of 1907. The reasoning behind the procedure has developed somewhat as follows. The conciliator's first task is to win the confidence of both sides in the dispute, and it is therefore unwise for him to press for those facts which are not willingly given. When given, they must often be held in confidence and hence Boards which aim to bring about an amicable settlement are more or less compelled to give a minimum of the facts to the public.

Also it has been the experience of the chairmen of Boards that in many cases one of the best aids in the process of mediation is to prohibit the presence of newspaper reporters at hearings. The late Adam Shortt who was the chairman of many successful Conciliation Boards under the original Industrial Disputes Investigations Act of 1907 gives the following reasons for this practice. "The objection to such reports has been that the very calling for a Board implied that there were more or less radical differences of opinion and assertions of right, which the respective parties were about to lay down and defend, but which, in the course of the proceedings before the Board, must be given up or at least greatly modified on one or both sides, if a settlement were to be reached. In a court of law the arguments on either side are presented and maintained to the close of the case, the verdict is given by the court and accepted of necessity. There is not objection, therefore, to the publicity of the argument. But where, as before a Board of Conciliation, the verdict is to be reached by concession and compromise, and voluntarily accepted by both parties, it is not so readily reached if there is a daily record in the press of every modification of the original claims, which were advanced with confidence and backed with vigour through all the fruitless conferences which have preceded the reference of the case to a Board." [6]

Advantages of Conciliation Boards

It is noted that Section 36 of the Act reads as follows: "On receipt of the report of a Conciliation Board the Minister shall forthwith cause a copy thereof to be sent to the parties *and he may cause the report to be published in such manner as he sees fit.* Thus it is seen that the Minister can control the extent of publication of the report and also can see to it that the report is published only as a means of securing a compliance with the Board's recommendations.

[6] American Economic Association Publications—3rd series. Vol. 10, pages 161-162

Another point which has made Conciliation Boards preferable to employers and employees in the past has been their knowledge that Boards have not evolved and formulated any set of definite written principles that serve as a certain guide in the handling of disputes. As a result the parties concerned in any dispute can willingly submit their case to a Board which they know has not come to its task with a definite code in mind. This principle is essential to the parties to any dispute because both the very nature of industrial relations and the contract the parties are trying to write seem to militate against the adoption or formulation of such a code. The terms of the labour contract are based generally not on any given set of ethical principles, but rather on the best conditions each side can obtain at a given time, taking into consideration the economic factors then in operation. It is obvious that to try to adopt any given set of principles to apply in all cases where the various conditions change so much would be no less than foolhardy.

Summary

In summary, it can be said that a review of Canada's experience with Conciliation Boards reveals the following. Boards of Conciliation and Investigation are enjoined by the law to bring about settlements, and from the very outset they have generally approached their task as mediators and conciliators. They have heard the cases presented to them not as judges called upon to render decisions, nor as investigators to discover the relevant facts for the education of the community, but as peacemakers called upon to create a friendly and informal atmosphere which will help to bring about amicable settlements. Since they have been used so successfully in the past and fit so well into the process of conciliation it is easy to see why they have been retained in the new Industrial Relations and Disputes Investigation Act as one of the main cogs of settlement machinery.

PENALTY PROVISIONS

It has been pointed out in other sections of this work how Canada's experience in the field of labour legislation has shown that conciliation has always been a much more effective tool for the settlement of industrial disputes than compulsion ever could be. However, it has always been the policy of the Canadian Parliament to include in its labour legislation, the machinery for compulsory enforcement of the regulations of the legislation even if it is not the intention of the government that these penalty clauses should ever be used if there is any other possible means of effecting settlement. Under P.C. 1003 prosecutions could not be instigated by either party for offences committed under the Act except by the written consent of the Chairman of the War Labour Relations Board. Under the new Industrial Relations and Disputes Investigation Act, this written consent to prosecute must be obtained from the Minister of Labour himself rather than from the Canada Labour Relations Board which is the successor to the War Labour Relations Board.

Comparison of Penalty Provisions

A comparison of the penalty provisions contained in P.C. 1003 and those of the new Act shows that on the average, the severity of the penalties have been lightened under the latter Act. One of the most noticeable changes in the penalty provisions of the new Act is that the fine for every employer who causes a lockout contrary to the regulations of the Act has been reduced from a maximum of five hundred dollars per day under the old Order in Council to a maximum of two hundred and fifty dollars per day under the new Act. At the same time it is interesting to note the new treatment accorded employee organizations under the new Act.

Under the old Order in Council every trade union or employee's organization that authorized a strike contrary to the regulations contained therein was liable to a fine, upon summary conviction of not more than two hundred dollars for every day or part of a day that the strike continued. Under the new Act this penalty has been reduced from a maximum of two hundred dollars per day for each day that the strike exists to a new maximum of one hundred and fifty dollars per day.

Under P.C. 1003 there was a section under Penalty Provisions which made any person who was found guilty of trying to bribe or corrupt any person concerned in the administration or enforcement of the regulations subject to a fine not exceeding five thousand dollars and not less than five hundred dollars or to a prison term not exceeding five years and not less than six months or to both such fine and imprisonment. This penalty section has been dropped from the new Act. The sections in both regulations concerning any person, trade union, employer's organization or employee's organization who does anything prohibited by the Act or contravenes any of the provisions of the regulations remains the same.

A main difference in the penalty provisions of the two pieces of legislation is that under the new Industrial Relations and Disputes Investigation Act there has been inserted a section which brings definite penalties against any employer who transfers, suspends or lays off any employee because the employee is a member of a trade union or who tries to restrict the rights of employees under the Act in any way whatsoever. This section has been written into the new Act upon the strong representations of labour and in the opinion of the author is highly justified. Under this section where an employee has been suspended, transferred, laid off or discharged contrary to the Act, the convicting court, judge or magistrate in addition to any other penalty authorized by the Act may

(1) Order the employer to pay compensation to the employee for loss of employment, such sum as in the opinion of the court, judge or magistrate would have accrued to the employee up to the date of conviction except for suspension, transfer, lay-off or discharge.

(2) Order the employer to reinstate the employee in the position which he would have held but for such suspension, transfer, lay-off or discharge.

Penalty Clauses Reduced

From an overall point of view it is seen that the penalties for infringement of the regulations have been reduced rather than increased from the original Order in Council P.C. 1003 to the new Industrial Relations and Disputes Investigation Act. Such a move has been made undoubtedly from the lessons learned of experience and yet it leaves the reader wondering just how great a contribution penalty clauses do make to the successful workings of the Act. A review of the history of the workings of penalty clauses in Canadian Labour Legislation would perhaps aid in throwing some light on this topic. The first Canadian Act which contained penalty clauses for the infringements of the Act was the original Industrial Disputes Investigation Act of 1907. This Act, similar to the new Industrial Relations and Disputes Investigation Act was also written as a compulsory measure but was administered with the emphasis definitely on conciliation. The emphasis given to conciliation by the Department of Labour and the Boards of Conciliation and Investigation constituted under this original Disputes Act resulted in minimizing the clauses of the Act which imposed penalties for strikes and lockouts pending investigation. Administrators who were anxious to win the confidence of disputants and to persuade them to agree on amicable settlements could not at the same time threaten them with fine or imprisonment. Ac-

cording to the figures available[7] 472 punishable violations of the law occurred from 1907 to 1925, but only sixteen of these came before the courts and none of these cases was brought before the courts by the government. Eleven represented prosecutions for strikes illegal under the Act; seven of these were sustained by the courts and four were discharged; four represented prosecutions for illegal lockouts and in two of these cases the employers were fined. One case consisted of an application for an injunction to restrain an employer from reducing wages before the dispute had been heard by a Board. The injunction was suspended on appeal to a higher court on the ground that, as the agreement had expired between employer and employees, no rates of wages were in existence about which there could be a dispute.

Thus the history of penalty clauses in Canadian Acts of Labour Legislation has shown *an established policy of the government, even in the face of frequent violations, not to prosecute those guilty of illegal strikes and lockouts.* In addition to this policy, the government's act in lessening the penalty provisions in the new Industrial Relations and Disputes Investigation Act leads one to wonder why the penalty clauses have been retained at all. As a matter of fact representatives of organized labour have often petitioned the government to eliminate the provisions altogether.

Real Purpose of Penalty Provisions

Despite the fact that the penalty provisions do not appear on the surface to have much real effect on the successful workings of the Act, they do serve a real purpose which is this. Neither employers nor responsible trade unionists wish to be branded as violators of the public law. Both desire to court the goodwill of the community. Hence, the clauses in the Act, making it mandatory to apply for a Board before a strike or a lockout, often gives the government an opportunity to intervene in a difficult situation when either management or men, or both wish to fight their issues out without any interference. Thus penalty provisions act more as a restraining influence enabling the government to step into the dispute diplomatically than as an actual means of stopping violent strike action.

This view of the workings of penalty provisions is compactly seen on reading the testimony of former Prime Minister William Lyon Mackenzie King before the United States Commission on Industrial Relations in 1914. "The government has never laid particular stress upon the penalty end of it. The penalty part has always been treated in much the same light as a penalty for trespass. If the party affected wishes to enter an action to recover damages they may do so." [8]

Company Unions

The actual abolishment of company unions has not been really accomplished by the new Industrial Relations and Disputes Investigation Act although their position has been made almost untenable. Under P.C. 1003 organized labour loudly complained about the wording of Section "19" which says "an employer may permit an employee or a representative of a trade union or an employee's organization to confer with him during working hours or to attend to the business of the organization or trade union during working hours without deduction of time so occupied in the computation of the time so worked for the employer and without deduction of wages with respect thereof." Thus the employer could absolutely forbid any union organization in the plant, while encouraging the com-

[7] Mackintosh, Margaret, Government Intervention in Labour Disputes in Canada, (Ottawa; Department of Labour, 1935)

[8] Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations Created by the Act of Aug. 23, 1912 (Government Printing Office, Washington, 1916) Vol. k, page 715

pany union to do all its organizing during working hours. Thus labour proclaimed Section 19 as a great set-up for the encouragement and protection of company unions, and also they were averse to the use of the term "employee's organization" in the wording of the Act because nine times out of ten, this meant a company union.

Under the new Industrial Relations and Disputes Investigation Act the term "employees organization" has been dropped, thereby removing one of the thorns in the side of labour as regards company unions. However the other "unfair practices" in the new Act are repeated almost word for word as they were written in P.C. 1003. Thus Section 4 subsection (1) of the new Act is practically identical with Section 19 of P.C. 1003. The actual experience with P.C. 1003 has shown that these sections have not, as labour charged, encouraged employers to foster company unions. On the contrary, these sections have made the position of company unions very, very difficult and their value in preventing employer discrimination and pressure against employees has far outweighed danger of the possibility of their being used to foster company unions.

Percy Bengough, president of the Canadian Trades and Labour Congress of Canada pretty well summed up labours' realization of this point when he wrote the following passage in a circular concerning the new Industrial Relations and Disputes Investigation Act which was sent out on June 19, 1947, to all the various locals associated with the Congress. "We requested that company unions be definitely prohibited. Section 4, paragraphs 1, 2 and 3, while not definitely prohibiting company unions, certainly makes their existence insecure and their operation and recognition difficult." [9]

Thus company unions, while they have not been absolutely prohibited under the new Act, have been put in a position where their existence will be very difficult to cover up.

Summary

In summary it can be said that the penalty provisions in the new Industrial Relations and Disputes Investigation Act have in general been reduced in severity from those contained in Order in Council P.C. 1003. However the fact that they have been tempered does not detract from their main purpose in the legislation which is to give the government an opportunity to step into Labour situations which would otherwise ordinarily be settled by a fight at the expense of the public. The provisions thus act more as a restraining influence enabling the government to act diplomatically than as an actual method of stopping violent strike action.

Company unions have not been completely prohibited under the new Act and this appears to be a just ruling when viewed from the stand point of common sense and preservation of civil rights. It is the author's opinion that in a democratic country it should not be within the power of a government to forbid a group of workers to unite and organize themselves as workers of one company if they desire to do so. Freedom of association is a personal right and provided that such company associations are not dominated by the employers involved, there is no real reason why they should be forbidden, merely to make the power of a national labour body absolute.

SUMMARY AND CONCLUSIONS

The Industrial Relations and Disputes Investigation Act which became law on September 1, 1948, might now be said to form legislation which represents

[9] Standing Committee on Industrial Relations, Minutes of Proceedings and Evidence No. 3—July 1, 1947 (Ottawa; King's Printer) page 65

the closest Canada has ever come to a national labour code. It represents a synthesis of the original Industrial Disputes Investigation Act of 1907 and the Wartime Labour Relations Regulations or Order in Council P.C. 1003 combining all the best features of both of these pieces of legislation. It has been framed on the lessons of long experience, is based upon the principle of conciliation and like all other legislation depends for its success upon good administration.

One of the first steps towards national unity is uniform nation-wide labour and social laws. The long experience of Canada in dealing with industrial disputes has shown this country's need for such a definite national labour code. However, since Canada is peopled by two distinct major racial groups, this principle has been difficult to bring into effect; the province of Quebec in particular objecting strongly to the removal of any of the powers of provincial autonomy granted under the British North America Act. Thus in order to avoid trouble it has been impossible to make the Industrial Relations and Disputes Investigation Act a national labour code in the real sense of the word despite the obvious needs of the Canadian economy.

The Act falls short of a national code, in that its application is limited to industries, undertakings of an interprovincial character and such works as are declared by the Parliament of Canada to be to the general advantage of Canada, or for the advantage of two or more provinces, and outside the exclusive legislative authority of any one province. Thus although the Act is not a national code in the real sense of the word, it does set up a pattern which the various provincial governments can follow in their own labour legislation and thus provide the nation with the most uniform legislation possible under the existing circumstances. This indeed was one of the main purposes of the government in formulating the Act.

The limited coverage of the Act was the main objection voiced by Canadian Labour with the unions suggesting strongly that provision should be made for dealing with nation-wide disputes which concern Canada as a whole, in industries which normally come under the jurisdiction of different provinces. However when one considers the political unrest and resentment which would certainly follow any attempt to take provincial powers away from certain provinces one cannot help but decide that politically speaking the time is not yet ripe for Canada to have a national labour code. Such a code can only be universally adopted when all the provinces, of their own volition come forward and give up their necessary powers so that a uniform national code can prevail. Until such times one cannot dispute the fact that the only course open to the government is to set up legislation which the provinces can model and follow.

The other main points which were sought by labour in the new code as written into a circular distributed to all members of the Trades and Labour Congress of Canada on December 12, 1946, were as follows [10]

(1) The basic principles of P.C. 1003 must be retained in the new code.

(2) Company unions must be definitely prohibited.

(3) The union concerned should be named as the bargaining agency and not individuals.

(4) Where all employees of an employer or organization of employers are required by agreement to be members of a specified union, there should be no provision in the law tending to prevent.

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[10] Standing Committee on Industrial Relations, Minutes of Proceedings and Evidence No. 3 —July 1, 1947 (Ottawa; King's Printer) page 64.

(5) In all cases in which both the employers and employees agree, there should be no interference either in reaching or changing the provisions of an agreement.

(6) The regulation requiring that 51% of the employees must vote for the union should read "51% of the votes cast" in the same manner as all democratic elections.

(7) A clearer definition is also required of who is to be excluded from the bargaining agency so as to prevent the past procedure of excluding thousands of bona fide employees on the pretext that they are employed in a confidential capacity and outside the benefits of the Act.

On June 19, 1947, when Percy R. Bengough, President of the Trades and Labour Congress of Canada was appearing before the Standing Committee of Industrial Relations to discuss the proposed bill, he made reference to these demands of labour in the new bill. [2]

(1) First, we asked that the basic principles of P.C. 1003 be retained in the new Act. The proposed Act meets this requirement with improvements.

(2) We asked that company unions be definitely prohibited. Section 4, Paragraphs 1, 2 and 3, while not definitely prohibiting company unions, certainly makes their existence insecure and their operation and recognition difficult.

(3) We maintained that the union concerned should be named as the bargaining agency instead of individuals. Section 7 and other sections, fully meet these requirements.

(4) Section 8, in affording protection to crafts or groups exercising technical skills, is both justifiable and necessary.

(5) This Congress also requested that where all employees of an employer or organization of employers are required by agreement to be members of a specified union, there should be no provision in the law tending to prevent. Section 6, subsection (1) meets our request in this respect.

(6) We protested the old regulations of Order in Council P.C. 1003 which required that 51% of the employees must vote for the union should read "51% of the votes cast" in the same manner as all democratic elections. Section 9 is a distinct improvement and meets our wishes.

(7) We requested that in all cases in which both the employer and employee agree, there should be no interference in their reaching or changing the provisions of an agreement. Section 20, subsection 2, meets this requirement.

(8) We also asked for clearer definition of "employee" and as to what employees should be excluded. We requested that only employees brought into consultation on matters of the employers' labour policy should be termed confidential employees. Part 1 clarifies this in a satisfactory manner.

Thus it is seen that the specific complaints of labour as regards Order in Council P.C. 1003, have all been ironed out in the new Act, with the exception of the absolute abolition of company unions.

Company Unions and the New Act

With regards to company unions it is believed that the government has followed the path of common sense and democracy in its handling of the situation. The legislation as written makes the position of company unions difficult to maintain but it has not taken away from people the personal right of freedom of as-

sociation by absolutely prohibiting such unions. It is admitted that in many cases, experience with company unions has shown that they have often tended to be dominated by the particular employers involved. However, cases do arise where a group of employees wish to gather together in one autonomous unit as the employees of one company and if that is their wish they should have the right to do so without any fear of government action. The law must represent the will of the majority but it must also preserve the personal rights of individuals.

Thus the new Industrial Relations and Disputes Investigation Act appears as a piece of legislation which is on the whole readily acceptable to labour. The two remaining main points which labour seeks in Canada as it does in the United States and other democratic countries are the compulsory union dues checkoff and union security. These are two vital issues and have long been sought by national labour leaders as the clinching strokes in making labour the power they feel it should be in the production process.

These two points have been omitted from the new Act for the same reason that the government did not specifically prohibit company unions within the legislation. This reason is that it has always been felt that labour legislation should not interfere in any way with any of the personal rights of individuals. Therefore legislation which would make the union dues checkoff and union security compulsory would first of all infringe upon the rights of employees to decide in what manner they wished to pay their union dues and secondly their right to determine with whom they wished to associate. It is felt that these matters are things which should be left for negotiation between unions and management and should not be set down as definite compulsory legislation which, while making the power of national unions strong across the board would be apt to infringe upon the personal rights of the employees involved. It is for this reason that the union dues checkoff and union security have not been included in the new Act and as a result still stand as objectives of organized labour in Canada today.

Summary

The Industrial Relations and Disputes Investigation Act stands today as the closest piece of legislation, Canada has ever had to a national labour code. It represents the product of years of bitter experience and as a piece of legislation it combines all the best features of its two main predecessors, the Industrial Disputes Investigation Act of 1907 and the Wartime Labour Relations Regulations or Order in Council P.C. 1003. It is framed upon the principle of conciliation and depends for its success, like all legislation, upon good, intelligent administration.

It has been criticized by labour chiefly on the grounds of the limited scope of its applicability. However, in the author's opinion it is felt that this criticism is not really justified at the present time despite the fact that Canada's economy would benefit vastly from such a uniform nation-wide code. As has been mentioned before, Canada cannot have a national labour code in the real sense of the word until *all* of the provinces come forth voluntarily and show that they are willing to give up their individual control regarding provincial industries as granted under the British North American Act and accept uniform nation-wide legislation in all industries.

The points of company unions not being completely prohibited has been shown to be justified on the basis of infringement on the personal right of association of employees. It is felt that this decision is completely justified as are also those decisions regarding the omission of the union dues checkoff and union security clauses for the same reason of infringement on personal rights. The final main objection voiced by labour has been the obstacles placed in the way of

national or industry-wide collective bargaining. The Act specified that no trade union which extends to the employees of two or more employers may be certified as the bargaining agent except with the consent of *all* the employers affected. This, in effect, gives one employer a veto power over national or industry-wide bargaining. This criticism is perhaps justified and yet it goes against the grain of general labour experience which shows that employers and employees acting as individual units can sit down and reach agreement much faster without the pressure and influence of an outside national body acting on the side of one party. Again one cannot help wondering just how much of labour's effort for nation-wide unity actually represents the desires of the individual workers and how much actually represents the personal ambitions for power of certain union leaders. Be that as it may, the legislation is aimed at the general target of keeping disputes restricted to the parties directly involved, based on the reasoning that they are the ones best suited to settle their own differences. Under this light it is felt that neither party has an undue advantage and it is with this idea in mind that the legislation has been written.

From the employer's point of view the Act is generally considered fair and reasonable with no major objections evident. From the author's point of view it can be said in final summary that it is felt, that until such times as Canada becomes of age as a nation and is ready for a national labour code in the real sense of the word, the Industrial Relations and Disputes Investigation Act offers one of the best pieces of legislation available in a democratic country for the settlement of labour disputes. It is fair and just and it allows an approach to labour problems which is characterized by common sense, the main requirement to the settlement of any dispute.

OIL IN CANADA

By JOSEPH E. POGUE

There is every evidence of an important oil future for Canada. This prospect should be of great interest to the investors and financial institutions of this important country. It should, however, be of even greater moment to the citizens in general, for in the long run they will be the greatest beneficiaries.

A large-scale development of oil in any country should mean: first, the industrial and commercial stimulation of the areas in which the activities take place; second, the provision of a supply of low-cost energy for the country at large which will have the effect of raising levels of productivity in both industry and agriculture thereby lifting living standards; and third, if carried far enough, the furnishing of a basis for exports to world markets, thus creating foreign exchange and raising the value of the internal currency in international trade. Oil is more than an ordinary commodity; it is an economic factor with great leverage power.

Experience with oil developments throughout the world has demonstrated that four conditions are necessary to attain really important results. First, the resource must be adequate. Second, conditions must be such as to attract a multiplicity of competing efforts, to stimulate the application of complicated and costly technologies, and to encourage the formation of the necessary capital. Third, markets must be available or subject to development. And finally, the setting must be such as to inspire confidence for maintaining a continuity of effort. Given this set of circumstances and in time the ultimate economic consequences are bound to be very great.

THE RESOURCE POTENTIAL

While oil-bearing sediments are known and to some extent have been developed in Eastern Canada, their area and possibilities are limited compared with Western Canada. Out in the Prairie Provinces, stretching from the Rocky Mountain front to the so-called Pre-Cambrian Shield and extending from the International Boundary to the Arctic Ocean, is a vast sedimentary basin which covers about 650,000 square miles. About a quarter of this area, along its Eastern Boundary, is only thinly covered with sediments and is consequently less favored for oil prospecting. The main body of the basin, however, covers 475,000 square miles, about 15 per cent of the entire area of Canada, and ranks as prospective oil territory. The favorable part of the basin is almost exactly one-third the size of the prospective oil territory of the United States. Since the United States has discovered to date over 60 billion barrels of oil, and its ultimate discoveries may exceed 100 billions, it requires no great stretch of the imagination to picture the Canadian potential as 5 to 10 billion barrels, or even more. While this figure is pure theory, and as such can command only very qualified acceptance, developments over the past two years, with the accompaniment of a colorful oil boom, have gone far toward supporting the idea that an oil future of the first rank is opening up.

The early decades of exploration effort in the Prairie Provinces were only meagerly rewarded by the discovery of the Norman Wells field near the Arctic Circle in 1920, the Turner Valley field in 1924, the Lloydminster area in 1939, and a number of scattered gas fields and minor oil pools. A new phase of more

active exploration was introduced by the discovery of the Leduc field in February, 1947. Almost a year later the Woodbend extension confirmed the importance of the area. Late in 1948 the discovery of the Redwater field, about fifty miles to the northeast, left no doubt of the importance of the play and gave strong promise of other important discoveries still to come. It is of particular significance that these fields are in the basin proper, nearly 1,000 miles from Norman Wells, and in a geologic setting entirely different from the highly faulted foothills belt in which Turner Valley is situated.

The demonstrated typical coral reef formation of the Leduc field calls attention to the analogy with conditions controlling oil accumulation in the older fields of the great West Texas basin in the United States. The latter area, one of the most important in the United States, already has an indicated ultimate production of seven billion barrels, although its volume of sediments is less than that in Alberta alone. We thus have a second datum point for evaluating the magnitude of the oil potential in Western Canada.

At the present time, the indicated known oil reserves of Western Canada are close to 600 million barrels, if we accord Leduc 200 million barrels and Redwater 300 million barrels, as seems probable. This figure represents a several-fold increase in less than two years. While such a geometric progression cannot be expected to keep up, because of the law of diminishing returns if for no other reason, the circumstances suggest another calculation for outlining the future. If ten more "Leducs" are found at the rate of one a year, reserves will stand at about 2 billion barrels by the end of 1958; if twenty are discovered in this interval, reserves of 4 billion barrels would be indicated. These figures, of course, are highly speculative, but they are within the bounds of reason in terms of the geologic evidence and the intensity of the search.

THE EFFORT AND MOTIVATION

"Undiscovered oil is an asset to no one." It requires more than resource potential to provide oil for the channels of trade. There must be a competent effort and an adequate incentive to sustain this effort. Apparently both are present in Western Canada because nearly every important Canadian and United States oil company is active there with the cream of its technical personnel. Over 50 million acres of leases have been taken up, 60 geophysical crews are at work, over 40 weldcat wells are hopefully drilling, and production has reached 40,000 barrels per day. Both Leduc and Redwater are spotted with drilling wells and drilling locations, so that production is bound to increase.

The rare and specialized talents of dozens of the most efficient companies in the petroleum industry are devoted to this task. These units are both small and large. Each is vigorously competing with the other. They are furnishing the managerial skill, the technical knowledge, and the capital required for success. The undertaking is peculiarly appropriate for free enterprise because no other type of economic organization can provide the multiple effort, dynamic vigor, and *elan* so essential for the creative effort of oil discovery.

In these days of collectivistic trends, Canada may deem herself fortunate in entrusting her oil developments to competitive initiative. Those countries which have elected to centralize their oil efforts will have another opportunity to observe the difference in the effectiveness of the two methods.

THE MARKET AND ITS LIMITATIONS

The resource and enterprise devoted to its development together seem adequate to support a rapidly rising curve of oil discovery and production for a considerable period ahead. But there are other factors which will influence the outcome and have much to say about the time gradients, the degree of realization,

and the economic consequences. These are impersonal forces in the realm of economics, over some of which no one will have any control and over others of which policies at the highest level will cast an influence. For these circumstances a more sober view is indicated than for the matters previously discussed.

A limiting factor to the rate of production is the size and availability of the market. The local market—that is, the oil consumed in Alberta, Saskatchewan, and Manitoba—represents about 60,000 barrels per day. Oil and facilities are in sight for the saturation of this market by late 1949 or early 1950. What then? Obviously, discovery must go on and fields must be drilled, but production at the same time must be retarded so as to build up a sufficiently defined potential to support the second, and very costly, step of providing long-range transportation facilities for reaching more distant markets. Some of these facilities are now in the formative stage, particularly a large pipe line from Edmonton to Regina with extension later to the Great Lakes region a logical development. The time interval between the saturation of the local market and the reaching of more distant consumers is apt to be a discouraging one for the producer, with the possibility of a lowered incentive, but this stage cannot be avoided. It must be confronted as part of the risks of the business.

Obviously Canadians will desire to see the oil production of Western Canada attain the level of the nation's consumption. As in other countries, oil consumption in Canada has been growing rapidly. In 1938, it was 128,000 barrels per day; in 1943, 170,000 barrels per day; and in 1948, about 280,000 barrels per day. About 90 per cent of this oil has been imported. In 1953, Canadian oil consumption probably will have grown to 360,000 barrels per day; and in 1958, to 400,000 barrels per day. On the basis of purely physical considerations, it would be reasonable to expect Canada's production to match its consumption within ten years, but such an attainment will require the placing of much of the rising production in world markets, for the large Canadian markets in the East cannot be physically reached by Western oil as economically as by oil from the United States and the Caribbean area.

The development of exports from the Prairie Provinces contemporaneously with rising imports into Eastern Canada represents an emerging three-way pattern of trade between our two countries. For a considerable period any Canadian oil that may come to the United States would not be a net import as it would be offset by shipments into Eastern Canada from the United States. This process might be regarded as making Alberta crude available to Eastern Canada via the United States, possibly through the medium of exchanges.

The extent to which this pattern unfolds will depend, in part, upon the needs that develop for supplementary supplies in the great central and west coast markets in the United States, which might be made accessible in a few years by the construction of long-range transportation facilities. If United States demands grow sufficiently, relative to the availability of supplies from existing sources, the external demand for Canadian oil may keep pace with its enlarging supply; but otherwise a limiting economic influence will impress itself upon the rate of expansion. In all events, competition with external sources of supply is indicated and this factor is appearing in its initial stages as production in Western Canada replaces the oil heretofore brought in for local consumption.

The economics of transportation and the variations in world supply and demand are thus two important factors which will have much to say about the rate at which indigenous oil production develops. A sustained growth in world demand will greatly favor the realization of satisfactory oil objectives in Western Canada.

CONTINUITY OF EFFORT

Since Canadian oil is under development almost exclusively by Canadian and United States nationals and the oil of the two countries is interchangeable in an economic sense, it is fortunate that the two countries have such parallel objectives and policies. A maintenance of these similar points of view will assure the continuity of effort so essential to the optimum development of the resource.

While it would be improper for a visitor to discuss Canadian oil policy, it may be of interest to call attention to the views of the United States petroleum industry as to the conditions best suited for maximizing oil development. The views are expressed by the National Petroleum Council in response to a request from the Secretary of the Interior of the United States, in a report entitled "A National Oil Policy for the United States," approved by the Council on January 13, 1949. The report goes on to say:

> "A country's oil resources are best developed when all who are engaged in petroleum operations—its own nationals and those of foreign nations — compete on equal terms. Favored treatment of one group at the expense of another, state monopolies, or state competition in any phase of oil retard maximum development. . . ."
>
> "Agreements . . . should provide to the companies . . . security of title to the property or rights acquired; managerial control of operations; the opportunity to make a reasonable profit commensurate with the risks originally assumed, and to form capital for expansion; and means for the prompt and fair settlement of disputes that may arise."
>
> "Finding oil calls for the efforts of a great many people of different characteristics. Despite the development of scientific methods, a major factor in discovery is still the willingness of many individuals and competing industry units, exercising independent judgments, to take risks. The chances of finding oil are increased as more people are encouraged to accumulate and venture their capital on their own initiative."
>
> "The participation of many . . . provides those multiple sources of initiative, imagination, and responsibility, out of which springs a great variety of discoveries and inventions, new ideas, and tremendous productivity."
>
> "The competitive form of economic organization, by offering the promise of a reward commensurate with contribution and efficiency, utilizes a motivating force for which no adequate substitute has been found."

I believe that these *desiderata* are reasonable and constructive, and coincide closely with the existing policies and regulations affecting the conduct of the oil business in Canada.

THE PROBLEMS OF EXCHANGE

It is well known that Canada is one of the great trading nations of the world. Its foreign trade in 1947 amounted to approximately 5 billion dollars, its exports and imports almost balancing. A characteristic of this trade, however, is that Canada purchases more from the United States than she sells to her. The reverse is true in respect to the United Kingdom and since Canada's sterling balances are not convertible into United States dollars a shortage of dollars is the result.

In 1947 Canada imported 252,000 barrels per day of crude oil and products. Of this volume, 157,000 barrels came from the United States, 75,000 barrels from Venezuela, and 20,000 barrels from other sources. It is apparent, then, that for each additional barrel produced in Canada and consumed there, one less barrel need be purchased abroad provided local demand is static. In fact, however,

domestic production must expand faster than domestic consumption for the exchange position to be benefited. This seems likely to begin to take place, but the effect cannot be substantial until the situation develops to the stage where trunk pipe lines are available to permit production to exceed the nearby needs.

FINANCING THE DEVELOPMENT

To expand Canadian production from 40,000 barrels daily to, say, 400,000 barrels per day in ten years will require very large amounts of capital. How much can only be approximated. In the first place, 2 or 3 billion barrels of oil must be discovered. In the second place, many thousands of wells must be drilled. In the third place, great trunk pipe lines must be constructed. And finally, Canada's refining capacity, now standing at about 253,000 barrels per day, must be expanded by over 100,000 barrels daily, not to mention additional facilities for distributing the products. All told the capital expenditures will come to about one billion dollars, according to such computations as can be made with the existing data.

A check on this estimate may be arrived at in this way. The United States petroleum industry represents a gross investment of approximately 21 billion dollars. It was recently producing about 6 million barrels per day of crude oil and natural-gas liquids. Thus the investment cost of each daily barrel is approximately $3,500. Accordingly, an increase of 360,000 barrels daily in Canadian production at $3,500 per barrel would indicate a gross investment requirement of 1.26 billion dollars. But as the refining and marketing investment has already been made on some 250,000 barrels daily of products, a deduction of 300 million dollars is suggested, leaving a figure of 0.96 billion dollars as a check on the primary computation.

How can the capital required for this expansion be formed?

Some light can be thrown on this question by comparing the process of capital formation in 1947 for 11 Canadian Oil Companies and 30 United States Oil Companies.

CAPITAL FORMATION IN THE CANADIAN AND UNITED STATES PETROLEUM INDUSTRY IN 1947

SOURCE OF FUNDS

	11 *Canadian Companies*[a]		30 *U.S. Companies*	
	MD	%	MD	%
Net Income	30.3	34	1219	45
Capital and other non-cash charges	12.0	14	941	35
Long-term debt issued (net)	32.8	37	279[c]	10
Preferred stock issued	11.0	13	29	1
Common stock issued	1.9	2	177	7
Other items	—	0	61	2
Total (net)	88.0	100	2706	100

DISPOSITION OF FUNDS

	11 *Canadian Companies*[b]		30 *U.S. Companies*	
	MD	%	MD	%
Dividends	19.2	22	425	16
Capital expenditures	48.4	55	2076	77
Added to working capital	16.3	19	175	6
Other items	4.1	4	30	1
Total	88.0	100	2706	100

MD Millions of dollars.

[a] Adapted from Statistical summary, Bank of Canada, December, 1948, page 221.

[b] Adapted from "Financial Analysis of Thirty Oil Companies for 1947." The Chase National Bank, September, 1948, Fig. 2 and Tables 7 and 18.

[c] The gross long-term debt issued was 476 million dollars, of which 197 million dollars was used for retirements and refunding purposes.

The chief feature of this tabulation is the magnitude of the capital expenditures and the extent to which these funds are supplied out of cash earnings; that is, net income and capital extinguishment charges. The Canadian group of companies reinvested in fixed assets 37 per cent of its net income; the United States group, 65 per cent. The Canadian group generated 48 per cent of its required funds from internal operations; borrowed 37 per cent, obtained 13 per cent from the issuance of preferred stocks, and raised 2 per cent by sale of common stock. The United States group, on the other hand, generated 80 per cent of its funds from internal operations and obtained only 20 per cent from outside sources — 10 per cent from borrowings, 1 per cent from preferred stock, 7 per cent from borrowings, 1 per cent from preferred stock, 7 per cent from common stock, and 2 per cent from sale of assets. Apparently the capital markets functioned better in Canada than in the United States, although preferred stocks were favored over common stock in Canada while the reverse was true in the United States. In both cases, however, debt financing exceeded equity financing.

As to the future, if we assume that Canadian oil developments over the next ten years will require a billion dollars of capital funds and that 50 per cent of those funds will be generated from operations, an amount of 500 million dollars is indicated to be raised from the capital markets. Should these funds be sought in equal parts in Canada and the United States, then the Canadian capital markets will be called upon to furnish 250 million dollars. This, of course, can be only the roughest sort of approximation.

HEMISPHERIC CONSIDERATIONS

During 1947 and 1948 apprehension was often expressed in the United States regarding the supply of oil available to the Western Hemisphere in event of emergency. Part of this concern arose out of the so-called shortage of current supply which marked the winter of 1947-48, but which is now seen to have been merely a temporary stringency since supply has overtaken demand and inventories have expanded sharply. Nevertheless, the rise of oil discovery in the Middle East to bring that region to one of commanding importance in the world oil economy with indications that the reserves in the Persian Gulf region total about 32 billion barrels, has drawn attention to the fact that the Eastern Hemisphere has reached a position of parity with the Western Hemisphere in respect to oil reserves. Therefore, discoveries in any part of North or South America are desirable from a security point of view, and the activities in Western Canada are particularly opportune and significant.

World oil developments in general have recently displayed a marked acceleration and the world situation with respect to supply and demand has undergone a sharp reversal from one of tightness to one of ease. So vast, indeed, has been the effort and such huge sums of capital have been invested, particularly in the Middle East and in Venezuela, that no country is likely for long to hold an indispensable position in the international oil trade. The rise of Canada to a position of a prospective oil exporter will be viewed with interest by all oil exporting countries as an added element of competition in the world oil trade. Relative costs, in the long run, will determine the trade pattern which will develop.

THE ATHABASKA TAR SANDS

An ultimate support to the hydrocarbon resources of the North American continent is the remarkable occurrence of tar sands which outcrop along the Athabaska River some two hundred miles northward of Edmonton. These deposits cover an area of 10,000 to 30,000 square miles, range from a few feet to 225 feet in thickness, and represent a volume of 35 to 100 cubic miles. The sand grains are enveloped by a film of heavy, viscous, tarry crude oil which cannot be produced by means of wells. The oil-content of these sands is estimated to range from 1 to 25 per cent and the reserve to be 100 to 250 billion barrels.

This deposit may be regarded as an ultimate reserve of tremendous size. It is not immediately competitive with oil obtainable from flowing wells, for the sands must be mined and the oil extracted. But it is interesting to contemplate the existence of a resource so large and offering such a challenge to technology.

NATURAL GAS

Natural gas is closely allied to oil in occurence. It is associated with all but the heaviest types of oil and in addition is frequently found in dry form in separate gas fields. In both cases, its discovery results from the same efforts which are directed to the finding of oil, and the wildcatter never knows whther gas or oil, or a combination of both, will be his reward. An important oil development is bound to be accompanied by the expansion of gas reserves.

The proven and probable natural gas reserves of Western Canada now stand close to 4 trillion cubic feet. A trillion cubic feet of gas will supply a market of 100 million cubic feet daily for a period of 27 years, hence the indicated reserve is already fairly substantial. The wildcatting campaign now under way, although directed to oil, will inevitably lead to some counterpart in gas. Perhaps the experience in the United States may throw some light upon the possibilities.

In the oil and gas areas of the United States, 5 trillion cubic feet of natural gas have been discovered for each billion barrels of oil found. Present reserves of natural gas are in the ratio of 7 trillion cubic feet of gas per billion barrels of oil. Hence, either oil has been withdrawn more rapidly than gas or gas has been discovered more rapidly in recent years than oil. As a matter of fact, in the evolution of the two industries, oil is apt to outpace gas in reaching markets while the discovery of gas is apt to outdistance oil when exploration in its later stages focuses on deeper formations. Current production of the two commodities is in the proportion of 3 trillion cubic feet of natural gas for each 1 billion barrels of oil.

While it is not known whether similar ratios will obtain in Canada, it seems probable that if 2 to 3 billion barrels of oil are discovered in the next ten years, 5 to 10 trillion cubic feet of natural gas will be uncovered at the same time, not only in the form of gas associated with the oil but as separate occurrences as well. Thus, the existing gas reserves may be doubled to tripled. It seems probable, accordingly, that the time is approaching when the reserve will support trunk gas lines to carry Canadian natural gas to more distant markets.

In this article, the available geologic and economic benchmarks have been used as a basis for attempting to sketch in the contours of a development which holds promise of having an important bearing upon the economy of Canada and exerting some measure of influence upon all other trading nations. Substantial physical potentialities seem to be present. Working on these potentialities is one of the most effective industrial mechanisms the world has seen — the aggregate of individual enterprises constituting the petroleum industry. This is a fortunate and favorable conjuncture which should yield results of the first magnitude.

THE RAND FORMULA

By JEREMY TAYLOR

Today, much is seen and heard about union security and the reasons for and against its increase in modern industry. Mostly because two such strong powers are involved in this argument, a union-security plan which would be satisfactory to everyone has been unobtainable thus far. The unions still demand more security, many companies still refuse it, and the resulting conflict still continues. One proposed solution to this important problem, as represented in the automobile industry of Canada, was put forward by Justice Ivan Rand of the Supreme Court of Canada in February, 1946, and has been referred to since its presentation as The Rand Formula. An attempt will be made in the following chapters to outline the formula, the circumstances surrounding its creation, the reasoning behind it, the reaction and results from it, and its spread in industry.

Explanation of the Terms Used

An explanation of the organization of labour in the United States and Canada should be made before proceeding with the chapters referring to the formula itself. Most labour unions at the present time are affiliated with either the American Federation of Labour (A.F. of L.) or the Congress of Industrial Organizations (C.I.O.). The American Federation of Labour unions are predominantly craft organizations, in which workers are organized as to the type of skilled job they perform. On the other hand, the Congress of Industrial Organizations unions are industrial unions, and are determined by the type of industry performed by the plant as a whole. All of these unions have agencies, called locals, in the different communities which contain the industries that these unions represent.

The Rand Formula has been used practically entirely in the Automobile, Aircraft, and Agricultural Implement Worker Union (U.A.W.) and the United Steelworkers Union of the C.I.O. Therefore, when the words "union" or "labour" are used in this text, they are meant to represent the U.A.W. — C.I.O. in whose locals the formula was mostly used. The reference to the "company" or the "management" in the text, when meant to refer to a specific concern, should be taken to mean the Ford Motor Company of Canada, which was directly involved in the adoption of the Rand Formula, and whose actions serve as a beacon to the other companies in the three industries which comprise the U.A.W.

Several terms, to be used later, should receive definition at this time. The first, union security, is nothing more than a guarantee to the union that its future operation, in the best interests of its members, would be assured. The closed shop and the union shop are the two best aids to union security. In a closed shop, all hourly-paid plant employees, with a few exceptions, have to belong to the union before they are hired, and have to remain in good standing with the union as a condition of employment. A union shop allows the new workers in a plant a six-month period at the beginning of their employment in which they do not have to join the union; however, once members, they must remain in good standing as a condition of their employment.

It should be noted that employees, obliged to join the union under the union and closed shops, are only the employees within the bargaining unit. As an ex-

ample of a bargaining unit, at the Ford Motor Company in Windsor, the bargaining unit is composed of all its hourly-rated employees except employees employed within the following classifications — time study, supervisors, draftsmen apprentices, plant protection, restaurant, clerical workers employed in the engineering, automotive engineering and/or inspection and located in Administration Building, Plant I, chemists, metallurgists, and laboratory workers employed elsewhere than in plants four and five; and office and salaried workers.

Lastly, a check-off system is one whereby all the dues collected from the workers are done so by deductions from the workers' pay cheques. The company, having done this, forwards a cheque for the total amount to the union. A voluntary revocable check-off is one where only those workers desiring to pay fees are obliged to sustain this deduction, and the check-off from a worker's pay cheque can be cancelled by the worker at any time. This voluntary revocable check-off prevails in an open shop where there is no obligation to become or remain a union member. Contrasted to this are the closed and union shops with their involuntary irrevocable check-offs, where all plant workers, except for certain exceptions, are forced to accept this deduction.

THE FORD STRIKE OF 1945[1]

The discussion pertaining to the Rand Formula perhaps should be begun by outlining the 1945 strike at the Ford Motor Company in Windsor, which resulted in the formula's initiation into industry. As Ford of Canada was the first company to bring the Rand Formula into a company-union agreement, here with Local 200 of the U.A.W.-C.I.O., it is considered advisable to include in this outline a consideration of the different forces at work at Fords at that time.

The City Itself

In reviewing the Ford strike, which took place in the fall of 1945, the City of Windsor must first be observed and considered. Windsor is a city of approximately 120,000 people, in which seventy-five per cent of the males employed in industry are in direct contact with the automobile industry, and where 10,000 to 12,000 men (depending on the time of year) are employed by the Ford Motor Company. The city, because of its location as a next-door neighbour to Detroit, is immediately exposed to the pressure of the labour movement in the American automobile industry. In Windsor, the rift in the population is not between political parties, as it is in the rest of Canada, but between labour and management. Because, although Ford of Detroit had granted its workers a union shop, Ford of Canada would not agree to follow suit, and by the fall of 1945 both parties in Windsor were in comparison to two armed camps.

Developments Leading Up to the Strike

Prior to the commencement of the strike, there had been in existence since January 15, 1942, an agreement between the union and the company whereby the union was given bargaining rights within the company for all employees, and the company was to refrain from carrying on its constant anti-union campaign. When the agreement expired in 1944, it was not renewed as there was a great deal of bitterness evident between the two parties. The main issue in the disagreement was the union demand for a union shop and a check-off system, both of which the company bluntly refused. Also, there were many other minor matters needing conciliation or arbitration. There were no monetary demands at that time, mainly because monetary demands had to be taken to the Regional or National War Labour Board.

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[1] The information contained in this chapter was provided by **Wallace H. Clark**, Public Relations Manager at Ford of Canada.

Negotiations about a new contract were carried on between the parties for more than a year, without any agreement being reached. In order to try to settle the dispute, the union applied to the Federal Labour Minister for a Commissioner to be established, and Mr. Justice Richards was named as commissioner. Because of the strained relationship between the two sides, Mr. Richards failed entirely to bring the parties together. Both the union and the company had submitted agreements through their legal counsels, which were refused by the other. In order to try again to bring the groups together, the Federal Minister of Labour, Mr. Mitchell, established a Conciliation Board under the authority given him by P.C.1003. The board was chaired by Mr. Justice O'Connor and the decision of the board was repudiated by the union, even before the company had made any decision on the matter. In June, 1945, as the union had completed the requirements of law, the membership voted to strike on the recommendation of the policy committee of the international union. The union hoped that the strike would draw attention to the inadequacy of Order-in-Council P.C. 1003 regarding the question of union security, and would intensify the demand throughout the labour movement in Canada for a national labour code on a perment basis, as well as bring a settlement in its case.

It must be remembered that the Ford Motor Company of Canada was notoriously open-shop and anti-union in open company policy. Prior to and during the time of the strike, the board of directors were members of the old era in the auto industry — that of building up a practice of benevolent paternalism on the one hand, and a ruthless system of espionage and intimidation on the other. Their attitude was tending toward the great powers endowed in the company as such, in that the company owned the plant and business, and was buying labour like a commodity. They felt the men had no more direct interest in the conduct of any part of the business than the seller of any other commodity, and that the judgment of wage standards lay solely in the hands of management. This attitude was quite evident in the top men of the company and was consequently conveyed to the department heads and down through the intricate plant system to the workers themselves.

On the morning of September 12, 1945, the union, with its demands for union shop, check-off and the rest still not being acted upon, gave personal warnings to the department heads in regard to compulsory vacation of the building and left the company's plants. In setting up their picketing outside the plants, the pickets barred all persons from the plants and powerhouse, except for the plant police, which were admitted forty-eight hours later. The number of workers immediately involved numbered 10,000 and constituted a loss of 160,000 working days during September, as well as many lay-offs in numerous feeder plants which were dependent on the Ford Motor Company as a large consumer of their production.

At first both union and management were stalemated and refused to take any action, but within three weeks an arbitration board was set up. However this was followed by another complete break-off of relations, when it was evident that at times the union leaders were concerned only with the maintenance of their position and power, while the company officials were acting in the same way on their own behalf.

As for the strike itself, the picketers, after the failure of the arbitration attempts, barred the office workers from entering the office, refused management the right to enter its own plant, and forced the company to set up offices at a local hotel, which was considered on different occasions for new picket activity. When picketers refused to allow the entrance of the maintenance men on the first

day of the strike, they caused an extended lay-off as well as much plant damage, because the original walkout occurred in the midst of plant operations. This prevention of plant preservation resulted in a continued lay-off of approximately 4,500 men for an additional six to eight weeks. Damage was greatest in the power plant and various sections of motor assembly, where fine work was done by precision machines. The estimate of repairs necessary to resume production was a very conservative $500,000.

With the prospect of intervention by civil and provincial authority to open the main gate of the company, the picketers herded about two thousand cars, belonging to innocent members of the public, around the section where the authorities seemed to be concentrating. This illegal action turned what had been a sympathetic public in the city and surrounding districts, decidedly against the union and foreshadowed a drastic cut in public donations for its support. However, the action seemed to indicate the fierce intensity with which the men were supporting their convictions for seemingly fair demands, which were being met each day by constant company hostility and refusal.

As far as the union was concerned, the main and undeniable issue involved in the strike right along had been the union shop and check-off, its feeling on the matter being that since its goal was union security, it would not agree to settle with a compromise. It would allow all other points to be compromised or put up for decision before an arbitrator, but it refused in this matter of the union shop and check-off. It was a question of getting what it really wanted or not getting it, and the union though that anything less than the union shop and check-off would be defeating the main purpose of the strike, as this would not be attaining the desired degree of union security for the union.

By December, the federal government had shown signs of interest and agreed to appoint an arbitrator, on the condition that both parties would bind themselves to his decision. The company was the first to propose an arbitrator, but maintained that he would have to be a non-biased member of the Supreme Court, in order to get its approval. When the union was approached about this arbitration, it finally consented to arbitrate all points in the dispute, including the union shop and check-off. This was mostly due to the length of the strike and the resulting financial effect on the union members and the community at large, as well as the fact that the cold weather was increasing the daily machine damage in the plants.

As it was, during the course of the strike, which ended December 29, 1945, the workers lost a total time of over 900,000 working days, and a wage which if they worked 300 days per year, would require two and a half years to be made up. Sympathy strikes involved, shoved the total unemployed at times during the ninety-nine days of the strike to over 20,000, resulting in a total minimum loss of 1,200,000 working days. For support during the strike, the union had to receive donations from all sections of organized labour throughout the continent, and had to carry on a public appeal in all surrounding districts. This was the price that the workers and society as a whole had to pay, because of the labour-management disagreement on the principles of union security.

Settlements of the Question of Union Security

To act as arbitrator in this dispute, Mr. Mitchell appointed Justice Iran Rand of the Supreme Court of Canada. Rand, after his arrival in Windsor, spent several weeks examining the Ford plants and touring the city, in an effort to acquire facts and knowledge about the strike. Then, on January 9, 1946, the arbitrator, along with men representing the union and the company, met to discuss and argue the pros and cons of the problem of union security, as presented by both

parties. These conferences lasted for one week and when they finished, on January 15, Rand left town to reason the problem out and arrive at suitable decisions.

ARGUMENTS FOR AND AGAINST A UNION SHOP[2]

As an understanding of both sides of the picture is necessary in order to realize the difficulty of obtaining a solution to the problem of union security, the conflicting arguments concerning the principles of a union shop, as put forth both by the Ford Motor Company and the U.A.W.-C.I.O., must be considered.

The Union's Bargaining Power

First of all, the union claimed that unionism could not function properly in the automobile industry, unless there was a union shop to strengthen the union's bargaining power. The union felt that with one hundred per cent union membership, it would have more authority to administer the contract than it had in an open shop, as it would be representing all the workers in its negotiations with the company.

The union charged that an open shop made for a weak union bargaining power, as it was impossible to get complete or nearly complete union membership because of the doubt and distrust, bound to be present on the part of the workers, of the policy of the union to do a job for its members. This doubt was caused by the non-unionists getting the same benefits as the union members, without having any charge or obligation on their part. The distrust of the members tended to lower the men's estimation of the union as their bargaining agent and meant reduced union membership, and therefore, lessened bargaining power for the union.

The union maintained also that the desire for a strong bargaining power was standing in the way of better co-operation between the union and the company. The union could not agree to any proposal put forth by the company which was unfavorable to the members, because of its fear that the members would feel that the union was not of any use and would resign. As a union shop would compel workers to become and remain members of the union, it would strengthen the union's bargaining power and bring about better co-operation between it and the company.

In respect to strengthening the union's bargaining power, the company argued that this was not needed. The company took the following point of view.

"We have subscribed to the usefulness of collective bargaining and since the inception of contractual relationships with Local 200, we have not fostered any rival bargaining agency or challenged its right to be the bargaining agency. We recognize the achievements got by the agency through mutual bargaining between the parties. Also we believe that these union achievements — attained with the co-operation of the company in many instances, and over the opposition of the company in others — demonstrate the union's power as a collective bargaining agency. We are certain that the union has nothing to fear either from the company, from the employees, or from any rival organization as long as it continues to offer service. We, in fact, have given the union special privileges — such as desks, lockers, and guaranteed day shifts for union representatives — not granted in any other automobile plant in Canada. We think that this is the only sound basis from which union security should flow."

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[2] The information contained in this chapter was received from the minutes of the meetings, held during the week of January 9, 1946 to discuss the question of union security, and was provided by George Burt, Regional Director of the U.A.W.-C.I.O. The arguments, concerning union security, were presented by **Mr. G. Burt** and **Mr. P. Conroy**, on behalf of the union, and **Mr. J. B. Aylesworth**, on behalf of the company.

Thus, the company showed its opposition to a union shop being set up for the purpose of strengthening the union's bargaining power.

Industrial Peace and Harmony

Labour's argument for a union shop continued by saying that this was the only way to obtain industrial peace and harmony, both among the workers in the plant and between labour and management. The union's argument was as follows:

"There is no hope of a feeling of liking and respect ever existing between a union member and a non-member. The member feels that the non-member is shirking his responsibility and putting this added burden on the shoulders of the members. The fact that non-members are looked upon as a third party by the union members, cannot be altered until a union shop is formed."

In addition the union argued:

"The two main powers evident in industry are the company, representing the invested capital, and the union, representing the invested labour. Now, the industry itself cannot function at its best when there are bad relationships between these two parties. However, where a powerful instrument on one hand is dealing with a weakened instrument on the other, these bad relationships are bound to exist and have a corroding influence upon the two parties. Therefore, the union must have more power, but in order for the union to have this substantial degree of power, it must represent the entire employee payroll which is eligible to be in the union. If there is a minority group in labour, there can be no harmony between these two powers, and there is bound to be fear and strife in the industry. This minority would have no place in a union shop."

The company, on the other hand, said that the seriousness of labour's share-the-burden-as-well-as-the-benefit argument, in regard to industrial peace and harmony, was greatly overstressed. The company claimed that this factor was insignificant when compared to the importance that it had been given in the discussions going on at that time. The management denied that the fact that there was a minority group in the plant, enjoying the union benefits and not supporting the burdens, was a primary cause of any great disturbance. It admitted that there was bound to be resentment on the part of a few union members toward this minority group, but not by the majority of the union members.

Moreover, the company declared that, regardless of the benefits which come from a powerful collective agency in a plant, there could not be complete harmony among the workers in that company, unless the bargaining agency obtained the support of the non-union workers. This support, according to the company, could not be obtained by the union taking away with its one hand the benefits which it had secured for the non-members with its other. The company went on to clarify this by saying that there were always some people in all bargaining units who, for one reason or another, were not in favour of the bargaining agency. These anti-unionists, although they had received many benefits obtained through or partially through the bargaining agency, had found them very substantially taken away by the union's calling of illegal strikes of long duration. As a result, these non-unionists have retained their anti-union viewpoint, and harmony cannot prevail in industry.

To continue, the company claimed that the union shop and check-off had done nothing in the past to alleviate the strained relations between labour and management. The company admitted that a previous record did not mean everything, but stressed the point that very frequently men will do as they have already done, and therefore the record was important. It went on to cite the cases of the Ford Motor Company of Detroit and the Kelsey Wheel Company of Detroit as follows:

"In 1941, the Ford Motor Company of Detroit agreed to a union shop and check-off system; not only to give the union the benefit of membership and security, but to eliminate a great deal of friction, dispute, and industrial strife. In return the company was assured that it would receive greater security, and that disturbances of the type then prevalent in other plants would be avoided. The contract, with its union shop and check-off provisions, was hailed by union leaders and others throughout the country as one of the most progressive steps ever taken by union and management toward industrial peace. However, these peaceful relations did not materialize during the next four years, and the experiment was an unhappy one as far as the company was concerned. Since the signing of the contract, there had been 773 work stoppages. Very frequently when there were these work stoppages, the union would get in and support the stoppages after they occurred, but would say that it was not instrumental in starting them. Or else, it would say that the work stoppages could not be stopped or controlled." In short, after the union shop was installed at Ford of Detroit, there were an extraordinarily large number of work stoppages evident, which the union was unable to, and seemingly unwilling to, prevent.

At the Kelsey Wheel Company of Detroit, a union shop had also been installed. In the fifteen months from January 1940, until April, 1941, when there was no union security provision in the contract, the total man-hours lost because of work stoppages and strikes was only 6,400 man-hours as against a total man-hours of work produced in the period of 22,530,962; or a percentage of man-hours lost through work stoppages and strikes of .29 per cent. In the fifty-three months following that, that is from April, 1941, until October, 1945, when there was a union shop and check-off, the man-hours lost through work stoppages and strikes was 1,876,404 out of a total of 62,693,722 man-hours produced, or a percentage of 2.992. This example showed that labour-management relationships were approximately ten times as good, in relation to work stoppages, when there was no union shop.

The union came right back to argue that this seemingly high rate of stoppages at that time was due to two things other than the union shop itself. Firstly, the workers for the first time had begun to feel their strength and organization and had not become used to this advantage. Secondly, at that time, because of the war there were a number of workers in the industry who had never worked in the industry before, and who should not be looked upon as a regular part of the automobile workers.

The "Free Riders"

The union's main plea for a union shop came on the grounds that the non-union members were accepting the benefits of the contract without having anything to do with supporting the agency which had brought about increases in wages, provided for seniority, and so on. The union felt that no industry could operate where a minority group was not ready to agree to the accepted principles that maintained the plant in its day to day operations. It compared this situation with a community which could not hope to function if a small group would not obey the principles of the law. The logical result, according to the union, where there is no accepted or recognized medium of authority and enforcement in a plant, just as in a community, is chaos. The union believed that if this minority group had the right to benefit from the fruits of the union's work, it should contribute to this work. As things stood then, this minority group was profiting by both the benefits granted by the company and those procured by the union, and was supporting neither side. The union considered that this was the height of irresponsibility and felt that the company should make the minority group take

on more responsibility, by adopting a union shop. (It should be recognized that the minority could not support the company except by capital investment, and therefore would presumably have to support the union.)

The only reply that the company could make to refute this appeal was the argument already mentioned, to the effect that any benefits which the union gave to the non-members were neutralized by the harm that it did these men, by way of calling illegal strikes of long duration. Thus, as far as the company was concerned, the union was of relatively little benefit to the non-members.

Rights of the Worker

On the other side of the fence, the company's main argument against the union shop was that it gave the union undisputed control over the lives, destinies, and the very right to work of the employees. As the union's arbitrary power under this setup would have no countercheck, there would inevitably be a strong tendency, on the part of the union, to shift from the base of service, and the justification for the continuation of the agency through service, to an emphasis upon the achievement of more and more power through dictatorship and bureaucracy. The company wanted to know where the counterbalance was against higher dues in times of restricted work opportunities; against other restrictions on the right to work; against seeking entrance into the closed ranks, and therefore against the strong chance of being unable to work or being driven out of the industry. Management maintained that something would be fundamentally wrong with a situation wherein the union shop and check-off were granted, under existing conditions, with no regard to the utter lack of control or countercheck on the bargaining agency, as far as the workers were concerned. The company felt that as things stood at that moment, privileges were being asked for which would impinge greatly on an individual's rights, by a body of men with neither the ability nor the desire to exercise and discharge the responsibilities coincident with the granting of these privileges.

The counterchecks that the company believed should be set up consisted of the following provisions. The union's constitution would be of no effect until filed with and approved by government authority; its dues, initiation fees, and assessments would not be withheld from or enforcible against the membership until approved by government authority; the union would become clearly and unequivocally under our law an entity, recognized by the law with the right to sue and be sued; and the individual union member would have his right clarified to have recourse to the only impartial tribunal, where impartiality can be assured and which is above reproach of being influenced by the parties with diverse interests, when he complains that he has been wrongfully deprived of his union membership and his consequent right to work.

The company answered the union's statement, to the effect that although the employer in theory may have to discharge men because of the union this does not actually occur, by presenting the following data. In the summer of 1945, the United States Rubber Company of Detroit inserted a maintenance of membership clause in its collective bargaining agreement with the union, providing that the employees must remain in good standing with the union in order to continue their employment. From July 11 to July 13, 1945, twelve union members had an argument with union officials. They did not agree with union policy and as a result were suspended from the union. This made it necessary for the company to terminate the services of these twelve men. On July 13, these men picketed the plant and the rest of the workers refused to the cross the picket line. The strike lasted for seventeen days until the army took over, work was resumed, and the twelve men were not re-employed. This was an example of men who had

disagreed with the union on union matters, losing the right to hold their jobs.

The union replied to this company argument by saying that everyone who belonged to an industry should become a good citizen of that industry, that is become a member of the union. It declared that a worker's rights as a citizen of Canada were based on more than his desire or displeasure. They were wrapped up in the requirements of good citizenship. In the same way, any minority labour interest in a plant should be interested in becoming a good labour citizen by becoming a member of the union, which represents the vast majority of the employees. It pointed out that, as in any democratic government, the governing body could be changed by a majority vote of the members.

The company retaliated by saying that the claim that the union shop was democratic as it was analagous to the working of the parliament and municipal institutions — which rest on the rule of the majority and make the minority pay taxes even if they do not approve of the ruling body — was a complete misconception of what democracy meant and was. Although citizens of the state had to obey the law, they had freedom within the state and enjoyed the protection of the law in doing so. They were not bound to work specifically and were not confined to work in one particular place. It was true that they had to pay for the mechanism that carried on the society, but in return they got certain guarantees and a certain recompense for that. (Protection of their property and themselves, free education for their children, etc.)

The union on the other hand, according to the company, could not provide any real security to a union member, as far as his job security went. Job security was not synonymous with union security and could come only from the workman's ability to produce something which the public wanted at a price which the public competitively was willing to pay. No one could foretell what economic forces would be brought to bear, and what the results would be with respect to the company's markets and its ability to sell its products in the same coverage as it had done before. As a result, no one knew how many workers the company would be needing, and no worker, just because he was a member of a union having union security, could be assured of his job. Thus, the degree of security provided by the union in a condition of union shop and check-off, could by no means compare with the degree of security provided by the government in a democratic country. The company pointed out, also, that the degree of compulsion on the citizen in a democracy, with respect to a government which he did not like, was not at all the same degree of compulsion which was placed upon his private life and upon his very economic existence by the union shop and check-off.

Maintenance of Union by Union-Shop Check-Off

The union declared its need for the union-shop check-off as a means of keeping a steady, reliable stream of funds coming into the union treasury. In order for the union to operate in the best interests of its members, the union felt it should not have to be bothered by the fear of non-payments by some members, and by the necessity of having to have the dues collected by the union representatives. In the past, these union representatives had had to approach the members in the rest periods or before or after work, so as to get the money needed to maintain the union (the company would not allow any union activity to be carried on during working time). A check-off system would mean that the union would have none of this inconvenience, as the company would give the union a cheque every month, covering the complete dues of the union personnel. Because everyone in the bargaining unit would have to pay the dues and the union would be assured of collecting the sum all at once, the union could be certain of a definite sum of money coming in at a definite time each month and could budget its expenses accordingly.

The company opposed either a voluntary revocable or an involuntary irrevocable check-off. In either case, as far as the company was concerned, this represented a very costly expenditure on its part. It quoted the following facts concerning the costs incurred by the union shop and check-off at the Ford Motor Company of Detroit. In 1945, the company spent $2,814,078.36 in the Dearborn area alone, to collect due and fees and to pay more than one thousand union men in the company's plants, who spent all or part of their time handling union business.

Prominence of Union Shop at That Time (1945)

Both sides brought forth contradictory reports concerning the union shops and check-offs in use at that time. The company produced the following information. Figures published by the Department of Labour showed that, of twenty-five automobile manufacturing plants in Canada holding union agreements, only two had provision for union shop and one for check-off procedure. More important, the three establishments concerned employed only three hundred and thirty workers out of the industry's total of 17,672. The remaining twenty-two establishments, employing more than ninety-nine per cent of the automobile workers, had no requirements as to union membership. Complete figures for the iron and steel industry, of which automobiles and automobile parts were considered a part, showed that out of 336 establishments employing 239,249 workers, thirty-four had a union shop and eight a closed shop. They represented 2.1% and .01% of the workers respectively. There were sixty plants with some form of check-off arrangement, the majority of which were voluntary. Maintenance of membership clauses in thirty-six plants affected 11,132 or 4.6% of all iron and steel workers. In automobile industries, there was maintenance of membership in one plant with seventy-five workers, there was union shop in two plants with 219 workers, and there was a check-off in one plant with 111 workers. This information definitely showed a leaning in the automobile industry in Canada toward the open shop.

However, the union also produced some information, giving a different picture. In the United States, Ford had a union shop and check-off since 1941, and since that time the American Company had made no effort to have the union-shop clause eliminated from the agreement. In Canada, 40% of all agreements provided for some kind of union security. The closed shop was then general in the shipyards of the west coast and had appeared in the steel and auto industries, while maintenance of membership clauses had been written into several important new contracts in auto, steel, and textile industries. The western coal miners had been covered by union shop agreements for twenty-seven years, while the eastern coal industry had the check-off in its union agreement.

The Problem of Servicemen and Old Employees

Next, the company put forth the problem that it had four thousand ex-servicemen that were returning to the company to renew their employment. The company had made an agreement with these men to the effect that they would be employed after the war, in conditions not less favourable to them than those existing before the war. The company considered this directly in opposition to any agreement it might make with the union, whereby returning servicemen would have to belong to the union and abide by its decisions, even if the servicemen were opposed to the union in every way.

The union maintained that it had made it possible for the servicemen to come back to better conditions than those in effect when they had left for war, and therefore this would cause no problem at all. As for old-time employees, who, if they so desired, should have the right to cherish their old-time conditions

and refrain from joining the union, the union believed that they should attempt to go along with the times and, by endeavouring to adjust themselves to the industry as circumstances developed, should become members of the union. Whereas there used to be close contact between management and workers, in the present age it has become impossible for the individual worker to keep up any close contact with his employer, except through the union.

Union Responsibility

Finally, the company objected to any type of union security under the circumstances then present, as the company felt that it had no recourse whatsoever against the union in the event of any breaches of the contract or failure to live up to the contract, on the union's part. (A Canadian union cannot be sued for damages.) The company, on the other hand, by virtue of its corporate entity and its assets which were readily available, was bound by its word in an agreement. Thus, the company felt that if union security was to be compulsorily imposed, the union should have some corresponding responsibility; either by being subject to counterchecks by way of legislation, or by the trade union (as is the case in certain jurisdictions in the United States) becoming as a single check, subject to be sued and to sue as a matter of law. This would prevent the union from violating the terms of the contract, as it had done during the previous strike.

During this strike, office workers were not allowed to go to their offices, the power house was picketed, and the plant protection crew was denied admission to the plants. All this was with the official sanction of the bargaining agency, and all was definitely illegal. The company declared that the president of the local was himself in the picket line more than once, and that the union's international president gave an address from the picket line. These incidents were evidence of the little regard that the union heads had for the terms of the contract. Also, the wholesale seizure of the private property of citizens of the community (cars were forcibly seized and used to blockade the street), showed the unconcern with which the union and its members regarded the law of the land.

The union retaliated by saying that the union shop had operated well in other industries, without counterchecks. The mining industry had had the union shop for about twenty-seven years, without having any trouble with an irresponsible union. The union declared that when the union shop had been first introduced there, the management fought against it but finally accepted it. Since then, it had worked well and had become accepted by the management of the mining industry as a good and necessary thing. The union felt that if a union shop could work in the mining industry, it could work anywhere.

In conclusion, the union believed that if an effort were made in a union shop to educate the non-union followers in the principles and workings of the union, it would attain results, as the men would have an increased interest in the union because of the fees they were paying. The union was firmly convinced that unless the employees of the Ford Motor Company secured the union shop and check-off, the contract which would arrive out of the deliberations would go on for a year or two, and at the end of it there would be another strike.

JUSTICE RAND'S AWARD ON UNION SECURITY[3]

Justice Rand, after hearing these arguments for and against the installation of a union shop at Ford of Canada, examined them thoroughly and after several

[3] Information contained in this chapter was received from Justice Rand's award on the issue of Union Security and Rand's award on Administrative Points, copies of which can be found in the Windsor office of the U.A.W.-C.I.O., Local 200.

days deliberation came out with his decision or award, as it is called.

The General Problem Facing the Arbitrator

Justice Rand began his award by discussing the problem in general that was facing him. Usually, an arbitrator had only to resort to well-recognized rules of law to help him form his decision. However, in the case before him, Rand believed that this was not so. There was nothing in any law book which, he felt, could help him with his ultimate verdict in the case. Here was a situation where the principle of private enterprise was directly opposed to the popular labour notions of social justice. As a result, he selected principles which had attained acceptance by Canadian public opinion, and then applied them to this problem.

General Conclusions on the Problem

He started off in his award by saying that the social desirability of the organization of workers and of collective bargaining had been written into the laws and had been accepted by the Ford Motor Company itself. Therefore, labour unions should be strong in order to carry on the functions for which they were intended, and to allow the unions to adjust themselves with capital and the public in an increasing harmony among the three main factors of production. He went on to point out that unguarded power could not be trusted, and that the use of exercise of power should be subject to controls. Just as capital's power must be controlled to protect the other powers, so labour's power must be met in balancing controls in relation to the individual members or workers over whom it was exercised, as well as in regard to the industry and the public.

Justice Rand felt that progress in labour-employer relations could only arrive in one of two ways. Either it could come as a result of economic war in all its ferocity and waste, or else it could be brought about by a gradual rationalization of the interests of both sides. If war were relied upon instead of reason, the resulting waste from this economic struggle would be tremendous and unnecessary.

Thus, Rand drew the following conclusions. The organization of labour must in a civilized manner be elaborated and strengthened for its essential function in an economy of private enterprise. For this, there must be enlightened leadership at the top and democratic control at the bottom. Similarly, the absolutist notion of property, like national sovereignty, must be modified and reconciled with the interests of the public and labour, and an effort must be made to recognize labour's right to things which the company originally thought unwarranted. Rand believed that the primary cause of the conflict was the company's absolutist concept of property; namely, that the plant and business belonged to the company, the company was buying labour as a commodity, and labour had no more direct interest in the conduct of any part of the business than the seller of any other commodity.

As for the union, Rand said that it should take on itself a higher measure of responsibility, as an irresponsible labour organization had no right to have authority over persons or interests. He admitted that perhaps there was cause for exasperation and provocation on the union's part during the last strike, but that its abuse of striking power could not be excused, as it was a body recognized as the bargaining agent for approximately 9,500 employees, and as such had to accept responsibility.

Reasoning Used by the Arbitrator in His Decision

Rand's reasoning in making his decision was based on principles that he thought the large majority of Canadians would accept, and took the following form. He could not award a union shop for several reasons. First, it would subject the company's interest in individual employees and their tenure of service to

strife within the union and between them and the union, which in one instance had proved a serious matter for the company concerned. Secondly, it would deny the individual Canadian the right to seek work and to work independently of personal association with any organized group. Lastly, it would expose the individual worker in a generally disciplined organization to the danger of arbitrary action of individuals, and place his economic life at the mercy of an uncontrolled and unmatured group.

On the other hand, the employees as a whole became the beneficiaries of union action, and no circumstance provoked more resentment in a plant than this sharing of the fruits of union work by the non-member. As the company had admitted that substantial benefits for the employees had been obtained by the union — some in negotiation and some over the opposition of the company — it would not be inequitable to require of old employees a contribution towards the expense of maintaining the administration of employee interests and the law of their employment.

Moreover, Rand maintained that as the union was mostly made up of semi-skilled operators, as there was not that generalized individuality in understanding and appreciation of the necessity for employee organization that was found in craft unions, and as there was less individual appeal of an opportunity for social activities or union benefits than in other classes of labour, there tended to be a periodic disorganizing tendency in the union. As a result, he declared it necessary for the union to govern the men by mass techniques and necessary for all the employees to shoulder their portion of the burden along with the benefit. However, he felt that the obligation to pay dues would induce union membership on the part of the non-members, and this in turn would promote wider interest and control within the union, which would condition progressive responsibility.

He handled the company argument, that the benefits received by the non-supporters from the union were taken away by forced strikes, by ruling that the non-members should also have a vote in these strike votes, as well as the union members. However, to the company's suggestion that the union should not be allowed union security until such time as legislation was passed placing controls and requirements on the constitution of union, and to the company's demand that the union be made accountable for its actions to its members and to the public, Rand disagreed. He believed that this would assume that the resources of private negotiation were exhausted, and would perpetuate a ruinous hostility in labour relations as all disputes would then be handled by an outside party.

Rand believed that his award preserved the basic liberties of company and employees alike. As the assessment affected only the employees, the employer was concerned only with the expense of the check-off and the strength which it would give to the union. However, the expense could properly be taken as the employer's contribution toward making the union, through its greater independence, more effective in its disciplinary pressure even upon employees who were not members, an end which the company admitted was desirable. The award itself ran as follows.

The Award Itself

"There shall be set up as of the first day of February, 1946, a check-off compulsory upon all employees who come within the unit to which the agreement applies. It shall continue during the period of the agreement. The amount to be deducted shall be such sum as may from time to time be assessed by the union on its members, according to its constitution for general union purposes; it shall not extend to a special assessment (or an increment in an assessment) which relates to special union benefits, such as for instance union insurance, in which the

non-member employee as such would not participate or the benefit of which he would not enjoy. The deduction shall be made only in the conditions and circumstances relating to the payment of dues and assessments, laid down by the constitution and by-laws of the union, but it shall not include any entrance fee. At the end of each calendar month and prior to the tenth of the following month, the company shall remit by cheque the total of the deductions to the local."

Conditions of Rand's Award

"In addition to all other provisions in the agreement, and subject to but except so far only as it or they may from time to time be affected by any law or any regulation having the force of law, which, from time to time shall be read with these provisions, this obligatory check-off shall be subject to the following conditions.

1. No strike, general or partial, shall be called by the union before a vote by secret ballot, supervised by an officer of the Department of Labour for Ontario appointed by the Minister of Labour for that province, shall have been taken of all employees to whom the agreement applies and who by a majority voting have authorized the calling of a strike, within two months from the balloting.

2. The union by one of its international officers or by two officers of the Local, including the president, shall repudiate any strike or other concerted cessation of work whatsoever by any group or number of employees that has not been called by the union after being so authorized; and shall declare that any picket line set up in connection therewith is illegal and not binding on members of the union. The repudiation and declaration shall be communicated to the company in writing within seventy-two hours after the cessation of work by the employees or the forming of the picket line, respectively.

3. In addition to any other action which the company may hereunder or otherwise lawfully take, any employee participating in an unauthorized strike or other concerted cessation of work not called by the union, shall be liable to a fine of three dollars a day for every day's absence from work and to loss of one year's seniority for every continuous absence for a calendar week or part thereof.

4. Should the union violate this provision for union security, either by declaring a strike otherwise than with the authorization by ballot of the employees or by failing to repudiate or to declare as herein provided, it shall be liable to the penalty of a suspension of the check-off, in the case of any unauthorized strike by the union or an unauthorized general strike or concerted cessation of work by employees which it does not repudiate or of a picket line in connection therewith in respect of which it does not so declare, for not less than two and not exceeding six monthly deductions; and in the case of an unauthorized partial strike or cessation of work by employees, for failure to repudiate or declare not less than one and not more than four monthly deductions: The suspension to be in the former case, next following the return to work of the striking employees, and in the latter case, next following the violation. The penalty above the minimum shall be in the discretion of the company, but the company shall have regard to the seriousness and flagrancy of the violation: The reasonableness of that discretion shall be matter for the grievance procedure and shall be submitted direct to the umpire. The suspension shall be absolute in its effect on dues for each of the months of the suspension period, subject however to the decision of the umpire on any appeal under this paragraph.

5. At any time after the expiration of ten months from the date of the agreement and from time to time thereafter, but with not less than one year between ballotings, not less than twenty-five per cent of all employees to whom it applies may on application to the Minister of Labour for Ontario obtain a secret

ballot to be supervised by an officer of the Department of Labour for Ontario, designated by the Minister for the selection of a bargaining agent, but the union shall continue to be the bargaining agent of the employees until a new bargaining agent has been so selected by a majority of the employees.

6. The deduction on the records of the company will constitute the sums so deducted as money held by the company in trust for the local.

7. This provision for union security shall be enforced by the company against each employee to whom the agreement applies, as a condition of his continuance in or entrance into the company's service.

8. Any employee shall have the right to become a member of the union, by paying the entrance fee and complying with the constitution and by-laws of the union.

9. Except as otherwise specifically provided or dealt with, any dispute as to a violation of any condition or provision of this section shall be matter for the grievance procedure and shall be submitted direct to the umpire.

10. The company, the union, and the local shall do all such acts and things as may be requisite or necessary to the observance and carrying out of this provision for union security according to the true intent and meaning hereof."

This award and its conditions have been incorporated into the union-company contract as Section No. 80, and have remained in their identical form with no amendments up to the present time.

Administrative Points

Besides ruling on the union shop, Rand was also called upon to settle about eighty or so minor disputes between the union and the company. Actually, all but nine were decided by the company officials, the union officials, and the arbitrator sitting down and coming to an agreement or compromise on them. However, these nine points also had to be arbitrated by Rand. They concerned the then-present grievance procedure, whereby an employee not satisfied with the decision set down by the management in his case might appeal to an impartial umpire; the position of negotiating and plant committeemen as regards seniority; the accumulation of veterans' security; the establishment of group medical, hospital, and life-insurance schemes for the benefit of the employees; the granting of leaves of absence for union officials; the transfer of employees; the period of the agreement; and the scale of wages. On these points Rand exerted his usual fair-minded judgment and his rulings were incorporated into the union-company contract.

RESULTS OF RAND'S RULINGS

Before attempting to consider the management's, union's, and public's immediate reactions to the formula, the reasons why the two parties consented to arbitration should be remembered. The two forces realized that not only in the past had they failed to get together, but that conditions were getting steadily worse. There was evidence that bloodshed was near at hand and there was still no solution, so they accepted the only way to remedy the situation. Also prominently evident, were the facts that the workers were not getting any wealthier, and that the longer the plant was kept closed the more damage there would be to the machines. "It was a case of doing something to prevent tragedy, so the parties just asked for an arbitrator, sat back, and crossed their fingers." [4]

As a result, each side knew that it probably would not make any sweeping gains, but would receive fair treatment as far as Justice Rand was concerned. Therefore, it was to be expected that the formula would contain things which

[4] D. B. Grieg, President of the Ford Motor Company of Canada.

would be objectionable to both sides. After all, Rand had tried to modify the claims of both parties and to make rulings conciliating the opposing viewpoints. He could not possibly make a decision rationalizing the two views that would satisfy both these two parties.

The union, although admitting that the penalty provisions against wildcat strikes helped to maintain union discipline, found fault with the conditions to the award, while the company did not approve of the measure of union security allowed or the check-off. Nor was the company in favour of Rand's provision that the union shop and check-off could be cancelled, if the union did not co-operate in its agreement with the company. The company believed that the union would keep out on strike until its contract was restored in its original entirety or until an outside body was called upon to give a ruling. The company feared that there was too great a probability that these rulings would tend to lean in the direction of the union and the restoration of the check-off.

Moreover, management was of the belief that the company would not be able to concede matters to a collective bargaining agency and then withdraw them, as once this was done the whole force of organized labour from one end of the country to the other would be directed at the company, accusing the latter of taking something away from unionism that belonged to it. Also, there was the feeling on the part of both sides that the non-union men would create a lot of disturbance and hard feeling in the plant.

The union thought that the penalty clauses were worthless as in its opinion the workers would not abide by them. Also, it felt that the formula would cause the union much inconvenience in its administration, as two separate records would have to be kept in regard to fees, to take care of the non-union as well as the union members. The union believed that these records would not be as complicated if there were one hundred per cent union membership.[5]

As regards to the public at large, it was rather difficult to unveil its feelings. The only record available was a survey taken by the Canadian Gallup Poll in November, 1946. The question was asked, "In a factory which has a union, should the workers who are not members be obliged to pay the regulation union fees if they are getting union rates of pay?" Although this is not the same as asking the populace if it approves of the Rand Formula, yet it is the same as asking it if it approves of a very major part of it. The National Gallup Poll results were as follows:

	Yes	No	Undecided
Populace at large	52%	33%	15%
Union Families	75%	18%	7%
Non-Union Families	47%	36%	17%
Labourers	62%	25%	13%
White Collar Workers	54%	34%	12%
Small Businessmen	36%	41%	23%
Business and Professional Men	39%	49%	12%

Political Parties Voting "Yes"

C.C.F.	70%
Liberal	48%
Conservative	43%

The general evidence of this survey supplements and conforms with results of other recent Gallup Polls, reflecting favourable public attitudes towards unionization and union security, as aided and provided for by the Rand Formula.[6]

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[5] George Burt, Regional Director, U.A.W.-C.I.O.
[6] Census in The Windsor Daily Star, November 7, 1946.

Spread of Formula in Industry

Once the Rand Formula was introduced into the Ford-U.A.W. agreement, practically all the other U.A.W. plants in Windsor had the formula incorporated into their union contracts.[7] One of the major reasons for this was that although the formula had not been generally accepted by industry as a good thing, many companies figured that this was the easiest way out of their labour problems.[8]

However, after the formula began to show up well in the plants where it was used, other companies began to acquire confidence in the plan, and its spread was rapid. Soon, between sixty and seventy per cent of Windsor's industrial workers were covered by the plan.[9] Now, it is in all Canadian automobile plants, as well as in practically every other industry affiliated with the C.I.O. There is no record of any A.F. of L. union using the plan.[10]

The following results give evidence of the formula's spread through the C.I.O. unions in Canada. The U.A.W. has forty plants covered by the formula; the United Steelworkers of America has thirty-six agreements on file providing for the plan or a modified version of it; and the Electrical workers have twelve agreements using the formula.[11]

The formula's penalties, to a great degree, have been done away with in practically every industry but the automobile industry. This can be seen by the fact that in all the Electrical Workers Union's agreements that use the formula, there are no penalty provisions, and the majority of the Steelworkers formula-included agreements have the Rand penalties excluded from them.[12]

Effect of the Rand Formula at Ford of Canada

As far as the effect of the formula at the Ford Motor Company is concerned, there is today to all appearances, a far better feeling between the union and the management than there ever has been before. Although this cannot altogether be attributed to the Rand Formula, it may be said that the formula has helped both directly and indirectly in bringing about this better relationship at the company. "It has helped indirectly in that Rand's proposals and reasoning have shown the parties the need for co-operation between them if there is going to be any rest from industrial strife. It has helped directly in that the provisions in the formula have corrected many of the former major faults and sore points in the company-union agreement, as far as labour was concerned, without having made the company give up any right on which the latter has felt strongly. Thus, there is now less ill-will toward the company on the part of labour, and more respect for labour's rights by the company." [13]

Both management and labour feel that although the Rand Formula has undoubtedly laid the foundation for the happy relationship that exists between the parties at the present time, the shock that they both received from the strike and their realization of the necessity of a good working relationship between them were what really brought about this increased goodwill. This better feeling did not arrive as soon as the formula was put into effect. On the contrary, it came about by a very slow changeover, so slow in fact that it is impossible to tell just when the changeover became apparent.[14]

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[7] George Burt.
[8] "The Rand Labor-Relations Formula at Work," Factory Management and Maintenance, 105.95, March, 1947.
[9] Loc. cit.
[10] George Burt.
[11] Loc. cit.
[12] Loc. cit.
[13] D. B. Grieg.
[14] D. B. Grieg, George Burt.

Although the Ford Motor Company of Canada has gone without a strike longer than any other motor company in North America, this does not mean that the company's labour problems are over. On the contrary, there are some clauses in the present union-company agreement which were incorporated into it as a result of the Rand Formula, and which are still unsatisfactory to the union. There is every reason to believe that the union will continue to try and change these clauses in the future, and that its attempt will be met by the opposition of the company.

Effect of the Formula in Industry

The primary result that the Rand Formula has achieved in industry is that it has brought labour peace wherever it has been applied. To all knowledge there have been no strikes under the Rand plan. However, it must be taken into consideration that many of the plants having the formula employ only certain sections of it, and therefore cannot be classified as being under the whole formula. Other companies very probably have eliminated certain clauses objectionable to the union and thus have averted possible strikes. This minimizes the seeming importance of the Rand Formula as a strike preventative, and suggests that the future of the formula might not be as rosy as the past.

Another result of the formula is that there has been a marked increase in union membership wherever the formula has been adopted. The increase is probably due to the feeling of the worker that as long as he has to pay dues, he might as well join and have a say in all union activities, not just the strike votes. Also, the guaranteed right of a member to quit the union without losing his job is said to be decisive in influencing men to join. Unions are pleased too, because they say the "quit rate" is lower than under the open shop.[15]

The initial fear that the check-off would result in non-members leaving the company have been proven unfounded. Union leaders say that to the best of their knowledge there have been no quittings because of the check-off in any Rand plant.[16]

Managements in the plants operating under the Rand Formula are generally well pleased with the no-strike record. While this record speaks well for the formula, the very fact that there have been no strikes leaves some doubt as to how effectively the plan will operate when put to a real test. The usefulness of the formula will not receive a supreme test, until the controls put on the unions by the formula have been tested by actions of the unions on behalf of themselves or their members. So far, there have been no real trials of the control clauses of the formula, as there have been no wildcat strikes and the unions have not had any major disputes with the companies using the formula. However, there is every evidence to show that the unions have not abated their demands for the union shop and have been only temporarily satisfied, as the basic question of control over employees is still not solved to their satisfaction, even by the Rand Formula.[16]

Nevertheless, much credit is given to the Rand Formula for the recent improvement in labour-management relations in the plants where it has been used. It is believed that mutual acceptance of the responsibility-for-security principle will bring to both parties a confidence and trust in each other heretofore unknown.

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[15] "The Rand Labor-Relations Formula at Work", loc. cit.

[16] Harold J. Clawson, "The Rand Formula, Subsidiary and Quasi-legal Aspects," Canadian Bar Review, 24:879, 1946.

THE PROBLEM OF UNION SECURITY

After surveying the present labour-management situation in Canadian industry, one general conclusion may be drawn; namely, that the continuing struggle between these two parties on the question of union security can be settled in one of two ways — by a general rationalization of the interests of the two groups, or else by an all-out economic war between them. There is little doubt as to the undesirability of this issue being settled by an economic war, with all its waste and bitterness. This leaves the general rationalization of the interests of the two groups as the only solution to the situation. Now, there are two ways in which this rationalization can be brought about — by conciliation and by government legislation.

Rand's Method of Settlement

Rand was faced with this same choice and favoured conciliation rather than government legislation. He wanted the problem of union security to be handled as much as possible by the parties involved, and considered his position of arbitrator as one of seeking a compromise between the two sides and not one of deciding the issue on his own personal feelings. His desire for government non-intervention led him to make no law forbidding strikes in his award, but rather to set up penalties that could be enforced by the company if the contract was not adhered to by the union.

Inadequacy in Rand's Formula

However, although the formula has worked exceedingly well in the time it has been used, all evidence points to its excellence being only a short-run affair. Although labour has not broken its part of the agreement, it recently has shown its desire to do away entirely with the penalty clauses of the formula. So far, this has been accomplished in many of the contracts using the Rand Formula, and right now it is being asked for in many of the other formula-included agreements. The union's reason for asking for this is that it considers that the present Bill 195, which was recently passed by the Ontario Government to replace P.C. 1003, prescribes penalties which make the ones in the formula unnecessary; and also that since there is no penalty against the company for violating the agreement, there should not be any against the union.[17] This is a perfectly plausible argument, and shows a union preference for government administration rather than company administration of penalties and fines. The company, in general, also is not too fond of these penalty clauses. Several scrapes with labour in wildcat strikes have left the company a little uneasy about the ability of these provisions to control labour. It has found that imposing penalties on labour is not an easy job.

Thus, both labour and management seem quite eager to leave the penalties in the hands of the government, but with one great difference. Labour wants company penalty laws to remain the way they already are, but management desires additional laws and penalties and, more important, the strict enforcement of these laws and penalties. In general though, it is pretty well agreed by both parties that Rand's penalty clauses should be replaced and the penalties in Bill 195 relied on instead.

The union has further shown that it regards the formula as a short-run item by revealing that its objective right along has been union shops for all the companies with which it has contracts. It had only agreed to the formula when it had seen that nothing better could be obtained.[18]

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[17] George Burt.
[18] "The Rand Formula, Subsidiary and Quisai-legal Aspects," loc. cit.

This all leads to the one conclusion; namely, that the Rand Formula has worked exceedingly well as an immediate peacemaker between labour and management, but that it is likely to become obsolete in the long run.

A Different Method of Settlement

The failure of the Rand Formula in itself to handle the union-security problem satisfactorily is suitable evidence of the failure of conciliation alone to pacify the conflicting parties. However, on the other hand, a policy of compulsory government arbitration on this issue of union security would not meet with the approval of either labour, management, or the public.[19] Therefore the only remaining path toward a suitable solution to this problem lies in a combination of conciliation and legislation, that is, voluntary arbitration.

Thus, it is suggested that if the two parties were unable to agree either on issues arising during negotiation for a new union-security contract, on some item arising out of the contract, or on the meaning of any terms used in the contract, an arbitration board could be set up if, and only if, it were consented to by both parties. Any arbitration which was undesirable to either party, would be totalitarian and impractical and would weaken free collective bargaining.

Also, the selection of an arbitration board is a question deserving of a great deal of thought. The best solution might be to have the board consisting of three members — one selected by the union, one chosen by the management, and the third picked by mutual agreement of the parties and acting only on the dispute for which he has been selected. If the two sides could not agree on the neutral member, the Department of Labour would choose the man to break the deadlock.

The next matter to be considered in settling the problem, is that of enforcing the contracts and arbitration decisions against any infringement by either group. In the past, the government has been loath to prosecute either party, but has been content to let the two parties go about making a conciliation among themselves even though one party had violated several rules of the contract or some government laws.[20]

Although the Wartime Labour Relations regulations stated that no wildcat strikes could be called during the time of the agreement; that no employee bound by a union-company agreement should go on strike during the term of the collective agreement; that every employee, who goes on strike contrary to these regulations, is guilty of an offence and liable upon summary conviction to a fine of not more than $20 for each day, or part of day, that he is on strike; and that every trade union and every other employee's organization, that authorizes a strike contrary to these regulations, is guilty of an offence and liable on summary conviction to a fine of not more than $200 for each day, or part of day, that the strike continues; yet in 1945 and 1946 there were several wildcat strikes, in which not a single instance can be recalled where an attempt was made to prosecute or otherwise apply the appropriate penalties provided in P.C. 1003.[21]

Even on matters less serious than unlawful strikes, there has been an evident reticence on the government's part in invoking legal sanctions. Several applications for leave to prosecute have been made, but the Ontario Labour Relations Board has told the prosecuting parties to make their peace by conciliation rather than by compulsion.[22] Therefore, the threat of prosecution does not as yet tend

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[19] "Management Looks at Compulsory Arbitaration," Factory Management and Maintenance, 105:66, March, 1947.
[20] "The Rand Formula, Subsidiary and Quasi-legal Aspects," loc. cit.
[21] Loc. cit.
[22] Loc. cit.

to make either party recognize and adhere to the laws governing their relationship. A combination of a greater respect for these laws by both sides and a more rigid enforcement of them by the government is needed in order to bring about a greater stability in labour-management relations.

To make this enforcement of law a feasible thing the union might be made to accept responsibility, by becoming able to sue and to be sued as a matter of law. The union has become a strong power alongside management and therefore, just as management, should be made to take responsibility for its actions. A responsible union would mean a better union, which in turn would tend to better future relations with the company.

Summary of Conclusions to Problem

To sum up, the Rand Formula has truly a remarkable record. To all evidence, there has never been a major strike in any plant employing the formula. This is definite proof that it has worked in the past. However, labour is not satisfied with the formula as it now stands and is setting about to demand alterations in Rand's original award. Therefore, even with its success in the past, there is not much chance for its survival except by way of a bitter struggle between the two parties, with all the bitter economic consequences of a labour-management war.

Rather than have this happen, it has been suggested that there be a court enforcement of all contracts made between labour and management and an increasing of union responsibility, so as to make the labour party responsible for its actions and in that way satisfy the company's objection to additional union security. This would give the company a greater degree of "company security" in its relations with the union, and would also facilitate the obtaining of additional security for the union. The result of the company and the union both receiving additional security, should be marked betterment in their relationship.

There is a well-known saying in the sport of boxing to the effect that, for a fighter to be at his best, he has to be hungry — hungry, in this case, meaning fighting for security for himself and his family and for his recognition by the boxing world. In the same way, labour to be at its fighting best has to be fighting for recognition by industry and security for its members and their families. Now, by P.C. 1003 the union has attained this recognition, and given more security, it would have a great deal of its will to fight taken away. On the other hand, the company's newly-obtained security would overcome management's fear of having to work with an uncontrollable union, and would pacify the company to a large extent. This would lead to a better feeling between the two large powers in industry, and would result in a greater production in industry and therefore a higher income and better standard of living for the people of Canada.

WHY MEN WORK

By DR. HERBERT MOORE

For twenty-five years psychologists and economists have concerned themselves with the motivating factors that are the driving forces behind the will to work. Both groups have interpreted these forces differently — the psychologist in general concerning himself with the biological forces that express themselves in the form of release of physical energy, and the economist concerning himself with the organic needs that express themselves in the form of discontent. The psychologist has called his driving forces instincts, drives and tendencies, and has categorized them under the headings of aggressiveness, social urges, self concern, altruistic tendencies and a dozen or more other labels. The economist has called his driving forces needs and wants and has labelled them under the heading of the need for adequate reward for effort, for security, for recognition, for authority, for prestige, and for a dozen or more other needs of equal or less importance.

Influenced by the thinking of these representatives, the practical industrialist has attemped to apply these concepts to his everyday situations and has adopted costly and sometimes moderately effective measures to help his employees satisfy these urges and needs.

He has instituted various means by which the employees can get together in sports, outings, club rooms and social gatherings of every conceivable type as a means of satisfying the *social* urge to be identified with a group.

He has adopted a variety of expensive commitments to satisfy the *craving for security,* and to this end he has committed his company to heavy annual outlays for insurance, guaranteed annual wage, pensions, seniority privileges, medical facilities, recreation clubs, holidays at company resorts, and periodic surveys to detect any kind of hazard that may threaten the welfare of the employee — all for the purpose of helping the employee feel secure.

To satisfy the craving for recognition he has undertaken a variety of tactics — buttons for the twenty-five year service men, flowers for birthdays, pictures of every conceivable type to recognize prowess in catching fish, playing baseball, and generating youngsters.

To satisfy the craving for proper reward for effort, he has installed standards departments, incentive systems, group bonuses, scholarships for the children, the opportunity to purchase the company products at reduced prices, pats on the back and turkeys for Christmas.

In return for these efforts to purchase the employee's loyalty, constant effort and maximum energy expression, he has received spasmodic outbursts of production at a quantity and quality level that gladdens his heart, and frequently he has enjoyed prolonged periods of tranquility and beds of roses. More frequently, however, he has been confronted with the following:

(a) Annual demands for wage adjustment to the tune of an increase in his payroll of from 2-15%.

(b) Intermittent demands for multiplying the frills that add to costs. These frills have taken on various forms — increased pension plans, increased percentages to meet federally sponsored security measures; supplemen-

tary amounts for disabilities, hospitalization and relief — all of which increase his financial commitments and give no promise of adding to his income.

(c) Over against these demands for added outlay, he has been confronted with operating practices that give good evidence of collusion against the interests of company stability:

(1) The efficiency engineer surveys his plant and tells him it is operating at 40-60% efficiency.

(2) The social investigator surveys his plant and tells him that there is evidence of operator pace setting, and that the leadership is taken over by subordinates in the different departments.

(3) The personnel efficiency man surveys his personnel and tells him that 20-40% of the employees are improperly trained and of these, a considerable percentage cannot be trained, and

(4) The would-be loyal employee tells him that featherbedding practices control the pace of the individual operator and determine the production level, using the standards departments as tools to inform them how little can be done.

Confronted with these evidences of his failure at gaining the wholehearted co-operation of his employees, the operating manager to-day is questioning the soundness of the premises given him by the psychologist and the economist, and is wondering if he has not been banking on an insecure foundation and trying to build up a social organization of shifting sands. It is because of this partial failure that he is trying to find the answer to the question — "What will make the men in my organization work to the best of their ability?" Before giving an outline of the new thinking on the problem, it might be well to ask ourselves the question — "Why don't men work?" Let's look at a few facts:

A. Featherbedding

(1) Before the war a bricklayer laid 1,000 bricks per 8-hour day for $1.71 per hour, at a cost to the home owner of 1/3c per brick.
Now he lays 540 bricks per 8-hour day for $2.37 per hour, at a cost to the home owner of 3½c per brick.

(2) Since 1940 the average pay of plumbers, carpenters, electricians and other building trades craftsmen has increased 76%; during the same period their daily output has decreased 38%.

This has happened in an industry where there is no present probability of work shortage, where there is a crying need for more homes and where industrial construction demands are far ahead of the available supply of steel and timber. It cannot be said that the slowed pace is due to workers' desire to protect their job — there are more subtle factors responsible for the decreased pace. It is evident that there is a concerted attempt to limit the amount of work a member of a team or group should do, and this is not always caused by the fear that extra work will shorten the job. The causes of this attitude are many and varied. Probably as comprehensive an analysis of them as anyone has offered is provided by A. R. Herron — "Why Men Work" — Stanford University Press, 1948 — pp. 116-117. He lists the causes as:

(a) An instinctive reaction against past practices where employers exacted unreasonable amounts of work.

(b) A desire to increase the price of specific types of work by restricting the supply of production.

(c) A fear of the reduction of total work available, of the number and stability of jobs, through technological advance or the high productivity of workers.
(d) A subversive desire to curtail the efficiency of an enterprise or an industry.
(e) To lessen the risk of a cut in piece rates or of working oneself out of a job.

Over against these destructive causes there are others that are inspired by a healthier motive:

(a) An honest regard for the safety of the worker.
(b) A pride of craft and status which serves to demand recognition through the provision of subordinate workers.
(c) A sincere interest and pride in the quality of product or service; a sense of responsibility which cannot be fully discharged without a generous provision of supplementary jobs.
(d) To support the less efficient members of the group.
(e) To protect the trade life of the worker.
(f) To stand in well with one's fellows.

Regardless of the causes, the result has been an arbitrary limit on the amount of work that fellow members will allow another to do, an intermittent demand for decreasing hours of work with penalties for those who exceed the accepted limits, and concerted attempts to ostracize those who give free play to their energies and skills, and who work at a steady pace.

B. Subversive Influences

These take on many forms. Sometimes they are inspired by a representative of an ideological system whose avowed purpose is to centralize authority in a self-appointed bureaucratic group who professes belief in the equality of all men and adequate protection for everyone. These are easily spotted and cared for. More subtle and much more common than these representatives are those who disseminate slogans that act as poisons to undermine confidence in managements and in the foundations of industrial structures. Let's look at some of them:

(1) "How much do you get paid, bud, for making that shirt? .23c? What does the cotton cost, .17c? Sells at Sears Roebuck for .95c doesn't it? Who gets the other .55c?"

(2) "Do you know how long it takes to make that electric mixer? Goes through the assembly line in 30 minutes — .55c worth of labour! Material costs .15c! Do you know what your wife pays for it in the chain store? $1.50! Who gets the other .80c? Do you know that you do all the work and yet you only get 20% (—25% —30%) of what the company gets for it?"

(3) "We have a profit sharing system here, but do you know what our per cent was? 8%! Where did the rest go? We demand to see the company books" — implying that management is burying profits in hidden expenses that find their way into the pocketbooks of some of the men in management.

(4) Coupled with all these and serving as a key point that represents all the pent-up antagonisms, are the diatribes against the capitalists voiced by political pygmies and academic visionaries. They are expressed as polished slogans, platforms in social reform movements, political planks, and appeals for the welfare of the underdog by religious fanatics.

Jointly they breed mistrust, a questioning attitude and a feeling of injustice. The dampening effect of these inhibiting forces is a paralysis of the motor nerves and a release of energy in the form of emotional outbursts instead of in the form of constructive production.

In addition to these more general factors that have a dampening effect on the industrial body, there are other personal factors that might be summed up in a number of frequently expressed outcries:

(a) "A fellow will never get anywhere here unless he is a member of the family."
(b) "How can a job like mine be interesting to any man?"
(c) "You can never get a chance here to do what you really want to do."
(d) "I came here to get into sales, but try and get there."
(e) "No one ever gets anywhere in this place unless he licks the boss' shoes."
(f) "The only thing I ever hear here is a complaint."
(g) "If you suggest anything here you are likely to get bawled out."

These represent the personal forces that are playing on the minds of the individual workers and that dampen their spirit and prevent the constant expression of normal effort.

So much for the disturbing forces that are preventing men from working effectively. What can be done about them? There are some general, and some specific measures that have been tried and found effective. I want to list and illustrate a few of them.

1. *A Feeling of Belonging*

Industry can well learn a few lessons from other types of organizations in the manner in which they succeed in knitting a group of people together—people with different backgrounds, different languages, different hopes and different values. Some time ago Vincent Massey spoke to a Men's Club at the Timothy Eaton Memorial Church, on the bond that binds together the diverse units into one entity called the British Empire. He posed the question. "What is the uniting bond?" It is certainly not *language,* for large numbers in the British Empire cannot speak the language of others; it is not *economics,* for individual members fight among themselves for local and international trade; it is not *religion,* for the most diverse types of *religion* are frequently hammering one another to the point of extinction; it is not the *flag,* for that, at the best, is a symbol that may be but an old tattered rag, but that makes your heart skip a beat if you are in a foreign country and see it raised to the masthead. It is not the *King* for he can show all kinds of handicaps and we sympathize with them and defend him. There is something more profound than any of these superficial symbols and ties. It is a *feeling* — a feeling that we share in something bigger than ourselves that represents justice, fairplay and law and order. It is a feeling of belonging to something that transcends petty differences, and that makes each member know that he is part of a magnanimous whole, that he will sacrifice everything to defend. The refrain — "There'll always be an England" — represents it, and touched off more heart-throbbings during the dark days of '40 and '41 than any other refrain that touched our ears.

It is this same feeling of belonging that inspires the members of a secret society, of a lodge, of a church, and of a college to make costly sacrifices for the sake of their club.

How is it generated? It is expressed in a feeling of pride, in an occasional outburst of boasting, and in the frequently expressed thought that no matter

what else goes, that must survive. It becomes as much a part of the individual as his blood and bones, and even these lose their significance when its welfare is threatened.

We cannot hope to generate the same feeling for an industrial structure, but at least we can take steps to cultivate some of the bases on which the feeling rests. There are plenty of occasions in any company to justify a feeling of pride in the type of workmanship that is done, the quality of product that is let out of the company, and the reputation that the company has in the community for understanding and fairplay. Companies too frequently hide their candles under a bushel and modestly refrain from telling their own employees of their achievements in quality production, in maintaining community solvency and in helping build up homes. Three years ago a company in a small town in the United States put a full page report in the small town newspaper, telling what they had brought to the town during the year — the money that local citizens earned, the extent to which their patronage of the local hotel helped maintain it as a centre of pride in the town, the contributions it gave to local and national charities, and the manner in which its members had functioned in local organizations. The manager of that company told me he was amazed at the number of phone calls from citizens and visits from employees telling him of the pride they felt in being directly or indirectly connected with an organization that was of such significance in the community.

2. *Imparting Knowledge*

The eagerness with which employees respond to any opportunity to learn something about the company and its products ought to be a sign that here is a potentially valuable tool for developing loyalty and goodwill. For too long a time, industry has gone on the assumption that carrying out the demands of a job is all that the employee should be concerned with. How that job fits into the unit of which it forms a part, how essential that part is in ensuring the adequate functioning of the whole unit — the employee knows nothing about, and it is commonly assumed that he cares less about it. But let me give you a few illustrations:

(a) At Washington, Indiana, one company had a million-dollar contract to make parachutes for the Navy. The 1,600 employees were on piece work on a cost plus basis. The take home pay reached surprising proportions. Every 10th parachute was tested by a local pilot; and due to the eagerness to increase the take home pay on the part of some of the operators, one pilot was killed. That did not seem very important, for the pilot was not known to many of the employees; but in the plant there were fathers with sons training to be pilots for the Navy, and girls with brothers and boy friends training for the same job. They demanded the firing of the responsible operators, a closer system of inspection, and tested materials before they came to the operating room.

(b) In a lens manufacturing plant in Western Massachusetts, the management was conducting a foreman training class. As part of their information they took slides of defective lenses that had slipped by the inspection department. They magnified these defects and threw them on the screen. They took the same defective parts and assembled them as sunglasses and magnifying glasses and presented them to the Inspectors. The percentage of rejects instantly showed a disturbing increase.

(c) During the wart the Army and Navy undertook an education program that was never paralleled in any war in history. In addition to the

necessary skills to be mastered by prospective pilots, navigators, machine gunners, radio operators, riflemen and thousands of other occupations, the men had to be trained in attitude and spirit. To do this, the American leaders commissioned two groups to prepare two manuals, one entitled — "Psychology for the Armed Services," and the other — "Why We Fight." The former was in the nature of a series of lectures given in groups during the training period and may have had questionable value. The latter was designed to give a factual and visual knowledge of the principles and practices of the enemy. The series was produced in the form of seven films and shown to 48,582,127 men in the services. In them the men were given some idea of the manner in which the enemy tried to propagate discontent; the foundations of the millenium he offered, and the historical proofs of the results from the loss of personal liberty. The results spoke for themselves.

These illustrations serve to demonstrate the need for enlisting not only the use of the skills of the worker, but enlisting his thinking — for encouraging that by providing him with every form of knowledge that will stimulate that thinking. We cannot get the whole-hearted support of others by appealing merely to bodily assets; we must win their minds and their attitudes and their capacities for thinking about their job, and for translating some of that thinking into action. But it is not only at the operator and job knowledge level that the imparting of additional knowledge over and above the demands of the job will pay dividends. It is equally as beneficial when that knowledge is imparted at the sales, the contract, the production, and even at the policy level. Many companies have become alert to these possibilities and have adopted the practice of using the employee bulletin board to make periodic, even weekly announcements of the manufacturing jobs that have lately been contracted for, the types of sales that have been closed, the extent to which the different products are winning out over or losing to competitors, the cost to the company of insurance benefits, holidays with pay, federally-forced social insurance schemes, and decisions made by the Board of Directors that might affect or interest any of the employees. Some have even gone so far as to announce to the employees their expansion plans, their advertising program, and their sales expenses.

In one small box factory there was a serious lack of teamwork and an equally serious slump in production. Someone was brought in to advise them what should be done. A committee from the Union was appointed to get the facts from management. They got the facts and acted upon them to the dismay of some of the foremen. Then they turned their attention to the problem of absenteeism, quality and good housekeeping. As a result, the employees know that their plants is a marginal one, that it can operate profitably in good times, but that in bad times it cannot sell its product at cost and pay standard wages. As a result they explore with management the amount of wage reduction that is necessary to keep the factory in operation, and voluntarily accept wage cuts through Union negotiation. Management, in turn, cuts all other costs to the minimum to keep the plant going.

It is this channel that we need to widen to-day. Workers, especially the returned men, have acquired the habit of asking seemingly impertinent questions, and want to know why money is spent apparently fruitlessly and recklessly. The salesman who can spend $75.00 entertaining a semi-drunken pal under the guise of good business is the concern of the man who helped make the product that provided the sales expense fund. The glittering advertising headline that the punster converts into a joke is a matter of embarrassment to the office clerk. And, on the other hand, the prize that C.B.C. wins in an American competition

is not only a cause for better appreciation of the artists, but a topic to be discussed and bragged about by the maintenance men in the smoke room and the reception clerk at the desk.

It is still true that knowledge is power and that its dissemination creates pride in workmanship, and appreciation of the efforts of those responsible for its quality. This imparting of knowledge has a double-pronged effect on the employee:

(a) He gradually acquires the feeling that he is a member of a struggling organization that is concerned with fighting for the means of helping him gain a livelihood, and he feels that he must pitch into the fight.

(b) He gradually realizes the sincerity and honesty of management in laying all their cards on the table, and in taking each member of the group into their confidence.

In a company in which I worked lately, I got such comments as the following from the foremen and draughtsmen:

"This company is the squarest I ever worked in."

"Here everyone pitches in whenever there is a problem."

Talking about the expression of attitude with the Plant Superintendent later, he said, "How long do you think it takes to build up an attitude like that? My estimate is twenty years!" I doubt it, for I'm quite convinced that it can be done in a period of 2-5 years. The most of you have read, "Cheaper by the Dozen." Among the many things that indicate a novel way of building up a home, one of the most striking that appealed to me was the manner in which Galbraith conducted family conferences (including children under 10) to decide whether or not they should buy a rug for the living room, a camera for junior, a boat for the summer cottage, or a new car, and how much could or should be spent on it. It was that feeling of partnership and that habit of laying the cards on the table that resulted in two of the children writing with considerable pride about the exploits of a father who was a frequent prankster but a constant positive leader.

3. *Leadership*

The types of leaders with which we are most concerned are at the foremanship level, for it is their mistakes that most frequently cause trouble, but leadership qualities are expected from men all up the line. Some benefit might be gained from a summary of the types of activity that characterize leaders who succeed in getting men to work. Two years ago there was a survey made among American Industrial leaders at all levels to find out what were their common practises. A summary may be justified.

A.—He develops a feeling of belonging.

(a) He encourages participation by asking for advice of problems relating to work and production.

(b) He gets the group to maintain its own discipline.

(d) He encourages the group to participate in planning and scheduling.

B.—He keeps aware of those attitudes, mores and sentiments which interfere with full production, and is mindful of the fact that workers —

(a) Resist speed-up.

(b) Tend to set their own limits on production even under incentives.

(c) Resist technological changes.

(c) He refrains from excessive interference and over-supervision.

(d) Resist breaking down manual skilled crafts into semi-skilled machine operations.

(e) If professional, they resist direction.

(f) Are apprehensive of authority.

(g) Have a deeply ingrained feeling that supervisors play favourites.

(h) Believe supervisors tend to drive rather than lead.

C.—He appreciates the sensibilities and reactions of individuals as humans.
- (a) He does not initiate personal consultations but so behaves that workers come to him with personal problems.
- (b) He hesitates giving directive advice.
- (c) He deals firmly with discipline cases.
- (d) He does not relax discipline to curry favour.
- (e) He resists developing the "halo" feeling about some workers.
- (f) He lets workers know how they get along.
- (g) He tells them in advance about changes that will affect them.
- (h) He tells them how they stand as to production.

D.—He gets things done without apparent bossing.
- (a) By encouraging initiative and self-expression.
- (b) By controlling his own apprehensions about subordinates being superior to him.
- (c) By never attracting attention to self at the expense of a subordinate.
- (d) By permitting worthwhile subordinates to take the limelight if it helps group solidarity.
- (e) By acting decisively and expeditiously when the situation demands.
- (f) Explains the "whys" of emergencies and follows through on decisions.

E.—He acts as both teacher and trainer.
- (a) Maintains contact with training specialists but does most of the instruction.
- (b) Keeps training specialists informed of training needs.
- (c) Attends training conferences.
- (d) Analyzes training needs, breaks down jobs into training units and develops plans and procedures to fit the job breakdown.
- (e) Confers with each employee about his training needs, and prepares a simple training plan for each employee in writing.
- (f) Develops understudies and substitutes for each job, giving special attention to potential supervisors.

F.—Deals with unpleasant situations in a face-to-face manner. Especially such as:
- (a) Defective work; low production: bad attitudes; personal problems outside work; absenteeism; alcoholism; debt; psychoneurotic tendencies; fears.
- (b) He originates disciplinary action; suggests, cautions and reprimands.
- (c) He refers to higher-ups for suspensions, removals and penalties.
- (d) He maintains written records of disciplinary action.

G.—He holds correctve interviews with workers, and deals effectively with grievances—correcting imagined ones—and makes careful preparation of dismissal cases.

H.—He organizes, coordinates and manages—
- (a) Knows and abides by the policies, purposes and objectives of the company.
- (b) Discusses company policies with employees and gives reasons and explanations.
- (c) Outlines definite lines of authority.
- (d) Develops the lower supervisors so that they are the prime personnel men.
- (e) Does considerable staff work, in improving methods, maintaining controls, and providing adequate working facilities.

This outline may seem a burdensome and exhaustive one for a foreman but it is what modern foremanship involves, and it is the failure on the part of men to fulfill these demands that is responsible for low morale. Both management and unions are recognizing this. The interference into management prerogatives by union representatives in asking for the dismissal of foremen should not be too readily discarded as none of their business; quite frequently they are more aware of his lack of leadership effectiveness than management. Very recently, one of the time study men in a local company reported that he was not aware of the extent to which poor leadership could affect workers until he became involved in a situation where a change produced such quick results. It should be remembered that we work for people as well as for money, and unless those to whom we report give encouragement and appreciation they will never get our loyalty or best effort.

4. *A program of Personal Growth and Development*

This implies:

(a) Knowledge of the men.
(b) Willingness to lose good men to other companies with organizational demands that will use their talents.
(c) Considerable time directing that development.

Some companies have undertaken such a program; many have not. Why? The reasoning is a little difficult to appreciate but it nevertheless exists. It can be summed up as follows:

(a) Let well enough alone.
(b) We don't want those fellows to get too ambitious.
(c) A failure on the part of management to recognize the individual as such.

5. *A Personnel Program That Is Formulated to Meet the Basic Values and Needs of the Employees*

What these are can best be determined by independent surveys—by means of attitude studies, personal conferences and opinion polls. Three surveys have been conducted within the past two years and all of them agree on the following:

The surveys were conducted by Elmer Roper and reported in the American Mercury, by Peter Drucker and reported in Harper, and by the Research Group at Yale, headed by Shister and Reynolds and reported in the Yale Review. Their joint findings of what makes for job contentment were:

(a) Security and a chance to advance.
(b) Meaningful work whose meaning is understood.
(c) A feeling of direct participation in something that results in his being a real member of a working community.
(d) Relations with fellow workers that generate respect, recognition, a sense of responsibility and tangible appreciation for accomplishments — especially when these are over and above the line of duty.

Do you want to get men to give you their best? If so,

(a) Make them feel they are members of a team, pulling together for the common good.
(b) Provide them with good team captains who create loyalty and eagerness to accomplish results.
(c) Give them whatever information has any bearing on the security of their job and their personal welfare.
(d) Provide a program of personal development for every worthwhile, ambitious employee.
(e) Pay attention to the basic needs and values of the employees, and to the maximum extent that the company facilities will permit, provide opportunities for satisfying their needs and strengthening their values.

BOOK REVIEW

CANADA'S ECONOMY IN A CHANGING WORLD

Edited by J. DOUGLAS GIBSON

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A series of studies on Canada's current economic problems by Kenneth R. Wilson, Maurice Lamontague, H. F. Angus, W. T. G. Hackett, W. A. MacIntosh, Max Freedman, D. C. MacGregor, W. Plumtree and Courtland Elliott, with a General Review by the editor.

Canada's pre-war exports to the United States were mostly staples, and were insufficient to balance her imports from that country of manufactured and semi-finished products. This deficiency was financed by a favourable balance of trade with Sterling countries—the situation commonly referred to as "the Atlantic Triangle."

After the war the European nations were no longer able to finance their normal imports from Canada. In an attempt to re-establish traditional European markets (the alternative to which seemed to be economic subjugation to the United States) Canada adopted her export credit policy. It was hoped that this policy would realize three main objectives: the re-establishment of the pre-war equilibrium of our foreign trade, a continuing high level of employment and income, and the fulfilment of moral obligations to our war-devastated European allies.

Canada was unable to continue this policy after 1947 because of the shortage of American dollars, caused by increased imports from the United States, and the absence of payment for a large portion of her exports to Europe.

The Canadian government had taken steps at the outbreak of war to conserve American dollars. The newly established Foreign Exchange Control Board called in all American currency in the hands of Canadians, paying for it in Canadian dollars at the rate of $1.10. The nest egg of American dollars thus obtained was built up to over $1500 million dollars by 1946, by a combination of controls and circumstances.

Besides the depreciated dollar, which made American imports more expensive, a 10% War Exchange Tax was imposed in 1941 on imports from the United States, and an outright embargo was placed on a long list of luxury imports. The effect of these monetary measures in conserving American dollar reserves was greatly enhanced by the Hyde Park

Agreement in 1942, under which the United States spent large sums in Canada for war materials, by United States expenditures in Canada in connection with the Alaska Highway and other projects, by unusually large wheat shipments to the United States from 1942 to 1945 because of crop failures in that country, and by American investment in Canada.

The Canadian dollar was restored to parity on July 5, 1946, in an effort to cushion our economy against inflation in the United States by lowering by 10% the cost of imports from that country. It is maintained by the critics of the government's monetary policy that this move was largely responsible for the subsequent shortage of American dollars, and the austerity program which was then made necessary.

Currently our trade difficulties are being aleviated by E. R. P. It is almost certain, however, that even if E. R. P. is successful in rehabilitating Europe, European imports will be reduced (because of alternative sterling sources of supply, greatly reduced income from foreign investments, austerity programs, etc.). Canada must adjust herself to this situation; the problem is how we can make this adjustment without greatly disrupting our economy, and at the same time maintain our present high standard of living.

This, then, is the background of *Canada's Economy in a Changing World*. Its authors, all of them noted Canadian economists, have reviewed and explained many of the most important aspects of our new problems.

As an exporting nation, Canada is particularly interested in the revival of multilateral trade. Her efforts in this direction, besides assisting in the rehabilitation of Europe, have consisted of membership in the International Monetary Fund and the World Bank, and active participation in the Geneva and Havana negotiations for an International Tariff orgaization.

The authors of *Canada's Economy* agree that we should try to increase our exports to the United States, and attempt to reduce our dependence on United States imports. There is some disagreement as to method and practicability.

The book is well planned to present a maximum of information and a minimum of prejudice. Mr. Gibson's review seems to add little of value to the previous discussion; no thought is given to any readjustment of our economy to forestall the export of irreplaceable natural resources; the proposition that we should employ Canadian instead of American capital to develop Canadian industry is not developed. But these are minor criticisms and do not detract from the value of the book, which is an outstanding contribution to Canadian economic literature.

— JOHN DIXON.